United States Court of Appeals

for the Second Circuit

APPENDIX

75-4099 75-4126

United States Court of Appeals
For the Second Circuit

Docket No. 75-4099

AMERICAN CAN COMPANY,
Petitioner,

and

UNITED STEELWORKERS OF AMERICA AFL-CIO,
Intervenor,

against

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Docket No. 75-4126

LOCAL ONE, AMALGAMATED LITHOGRAPHERS OF AMERICA, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
Petitioner,

against

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

AMERICAN CAN COMPANY,
Intervenor.

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
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DECISION OF THE NATIONAL LABOR RELATIONS BOARD

Case No. 218 NLRB No. 17

Dated May 30, 1975

JKP

3a

218 NLRB No. 17

D--9757
Edison Township, N.J.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN CAN COMPANY

and

Cases 22--CA--5619 and
22--CA--5803

LOCAL ONE, AMALGAMATED LITHOGRAPHERS
OF AMERICA, INTERNATIONAL TYPOGRAPHICAL
UNION, AFL--CIO

and

UNITED STEELWORKERS OF AMERICA,
AFL--CIO

Party to the Contract

AMERICAN CAN COMPANY

Employer

and

Case 22--RC--5853

UNITED STEELWORKERS OF
AMERICA, AFL--CIO

Petitioner

DECISION AND ORDER

On October 23, 1974, Administrative Law Judge Milton Janus issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Charging Party, Local One, Amalgamated Lithographers of America, International Typographical Union, AFL--CIO, herein the ALA, filed exceptions and supporting briefs; Respondent filed cross-exceptions and a brief in support of its cross-exceptions and in answer to

the exceptions filed by the General Counsel and the ALA; United Steelworkers of America, AFL—CIO, herein the Steelworkers, filed a brief in support of the Administrative Law Judge's Decision; and the ALA filed a brief in opposition to Respondent's cross-exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and to the extent indicated hereinafter finds merit in certain of the exceptions of the General Counsel and the ALA. Accordingly, it adopts the Administrative Law Judge's findings, conclusions, and recommendations only to the extent that they are consistent with this Decision.

1. We agree with the Administrative Law Judge's finding, and for the reasons stated by him, that Respondent did not violate Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain collectively with the ALA as exclusive bargaining representative of lithographic production employees at the Regency plant and by refusing to bargain with the ALA concerning the effects on Hudson employees of that plant's closing.

2. We disagree with the Administrative Law Judge's finding that Respondent did not violate Section 8(a)(2) and (1) of the Act by entering into a collective-bargaining contract with the Steelworkers which provided that lithographic production employees at the Regency plant be included in the production and maintenance unit represented by that labor organization.

For about 30 years prior to 1974, Respondent operated a large metal container manufacturing plant in Jersey City, New Jersey, known as the Hudson plant. Production

and maintenance employees at this plant were represented by the Steelworkers, and the lithographic production workers by the ALA. In 1972, Respondent announced to the employees that it intended to shut down the Hudson plant in about a year and to open a new, smaller plant about 26 miles away, the Regency plant. It invited employees who wished to be employed at the new plant to file applications. When ALA officials learned from employees of the contemplated shutdown of the Hudson plant and the opening of the new Regency plant, they contacted Respondent and asked if Respondent was considering applying the ALA collective-bargaining contract covering lithographic production workers at the Hudson plant to similar workers expected to be employed at the Regency plant. Respondent replied in the negative, stating that Regency was a new plant, that Respondent hoped that it would be unorganized, and that if it were organized Respondent preferred that there be a single production and maintenance unit, including lithographic production employees. A few days later the ALA wrote Respondent that a majority of the lithographic production employees at the Hudson plant desired to work at the Regency plant and to continue to be separately represented by the ALA. Each of the parties subsequently reiterated its position about representation rights for lithographic production employees at the Regency plant without convincing the other.

On July 7, 1973, can-making operations began at the Regency plant. On August 23, 1973, the Steelworkers filed a representation petition seeking to represent all production and maintenance employees at the Regency plant, <u>including lithographic production employees.</u> At that time, of the expected full complement of 250 employees, there were only 64 employees at work in 16 of the expected 26 eventual job classifications; there were no lithographic production employees. Neither the Steelworkers nor Respondent informed the Regional Director of the ALA's possible

interest in representing lithographic production employees in a separate unit. Accordingly, on September 10, 1973, the Regional Director approved a stipulation by Respondent and the Steelworkers for the holding of a consent election in a unit of production and maintenance employees at the Regency plant. The phrase "including lithographers" was omitted from the unit description in the stipulated unit at the suggestion of a Board representative on the assurance of Respondent that no lithographic employees were then employed at the new plant. The election was scheduled for September 21. A few days earlier the ALA learned from employees of the prospective election. On September 20, the ALA hand-delivered a letter to the Regional Director objecting to the inclusion of lithographers in the scheduled plantwide unit election. A Board agent telephoned a company representative and asked if he knew of any interest which the ALA had in the election. The representative answered in the negative.

The election proceeded as scheduled with only the Steelworkers on the ballot. The Steelworkers won the election by a vote of 84 to 0; no lithographer voted as none was yet employed. On October 1, the Regional Director certified the Steelworkers as bargaining representative of a unit of production and maintenance employees at the Regency plant. By the terms of a national collective-bargaining agreement between Respondent and the Steelworkers employees in the newly certified unit were automatically included within its coverage; lithographic production employees were also included.

On October 5, Respondent offered five of the Hudson plant lithographers similar jobs at the Regency plant, but on the condition that they join the Steelworkers pursuant to the union-security clause in the Steelworkers contract with Respondent, and with certain less advantageous wages and other conditions of employment. The employees rejected the offer on those terms.

The Regency plant hired its first lithographic production employees in December 1973, and lithographic production began there in February 1974. As of the time of the hearing before the Administrative Law Judge, there were 24 lithographers employed at the Hudson plant and 7 at the Regency plant; the Hudson plant was expected to be completely shut down in July 1974.

The General Counsel contends that, under the principle enunciated in Midwest Piping & Supply Co., Inc., 63 NLRB 1060 (1945), Respondent violated Section 8(a)(2) and (1) of the Act by including lithographic production employees at the Regency plant in the production and maintenance unit represented by the Steelworkers, notwithstanding the pendency of a real question concerning the representation of the lithographic production employees and its awareness that the ALA was claiming to represent such employees.

The Administrative Law Judge held that Respondent did not by its contract violate Section 8(a)(2) because the ALA did not have even a colorable claim to represent the Regency lithographic employees inasmuch as Respondent had no obligation to transfer the ALA's bargaining status from the Hudson plant to the Regency plant or to recognize it as bargaining representative of lithographic production employees at the Regency plant.

The Administrative Law Judge has confused the existence of a question concerning representation with its resolution and thereby misapplied the doctrine of Midwest Piping. "[T]he sole requirement necessary to raise a question concerning representation within the meaning of the Midwest Piping doctrine, as modified by the Board, is that the claim of the rival union must not be clearly unsupportable and lacking in substance."[1/] There is no requirement under this doctrine that the rival claim

1/ Playskool, Inc., a Division of Milton Bradley Company, 195 NLRB 560 (1972), enforcement denied 477 F.2d 66 (C.A. 7, 1973); cf. American Bread Company, 170 NLRB 85 (1968), cert. denied 411 F.2d 147 (C.A. 6, 1969).

must in fact be valid and that the employer is required to bargain with the rival union. It is enough that the rival claim to representation is not "clearly unsupportable or specious, or otherwise not a colorable claim."[2/] An employer faced with conflicting claims of rival unions which give rise to a real question concerning representation may not recognize or enter into a contract with one of these unions until the representation question has been settled under the special procedures of the Act.[3/] If the employer acts in derogation of this principle it violates Section 8(a)(2) and (1) of the Act.[4/]

Here Respondent was faced with a real question concerning which Union, the Steelworkers or the ALA, was entitled to represent lithographic production employees at the new Regency plant. For many years the ALA had represented the lithographic production employees at the Hudson plant which was expected to be phased out and replaced in part by the Regency plant. Respondent had invited employee applications, including applications from lithographic production employees, for transfer to the new plant. It was also planning to transfer and did transfer some of the lithographic equipment from the Hudson plant to the Regency plant. There is no evidence that the work and skills of lithographic production employees at the two plants were expected to be significantly different. And from the time that the ALA learned of the contemplated change in operations it made known to Respondent its claim to represent lithographic production employees at the Regency plant. Although we have found that Respondent was not required as a matter of law to bargain with

2/ The Boy's Markets, Inc., 156 NLRB 105, 107 (1965).
3/ N.L.R.B. v. Hudson Berlind Corporation, 494 F.2d 1200 (C.A. 2, 1974), enfg. 203 NLRB No. 63 (1973); The Boy's Markets, Inc., supra.
4/ Ibid.

the ALA for the Regency plant lithographic production employees, this does not mean that the Respondent's claim did not raise a real question of representation. On the contrary, we find that on the basis of the ALA's long history of bargaining for lithographic production employees in a separate unit at the Hudson plant the transfer of part of the operations at the Hudson plant to the Regency plant, including some of the lithographic production work, the transfer of some of the lithographic equipment from the Hudson plant to the Regency plant, and the expected offer of employment at the Regency plant to some of the lithographers employed at the Hudson plant, together with the ALA's repeated claim to represent lithographic production employees at the Regency plant, created a real, substantial question concerning the representation of these employees.[5/] Instead of submitting to the Board the question of which Union was entitled to represent the Regency plant lithographic production employees, Respondent sought to resolve the question itself with the cooperation of the Steelworkers by utilizing the Board's processes while withholding vital information from the Regional Office personnel. Undoubtedly, if Respondent had reported the ALA's interest and claim, as it was dutybound to do,[6/] no election would have been held and no certification would have issued until the unit placement of lithographic production employees at the Regency plant had been resolved. Apparently it was to avoid this very possibility that information as to the ALA's claim of representation was withheld.

Accordingly, we find that, by entering into a collective-bargaining contract with the Steelworkers which included lithographic production employees together

5/ N.L.R.B. v. Hudson Berlind Corporation, supra.
6/ U. S. Chaircraft, Inc., 132 NLRB 922 (1961).

with other production and maintenance employees at the Regency plant, while a real question concerning representation of the lithographic production employees existed, Respondent unlawfully assisted the Steelworkers in violation of Section 8(a)(2) and (1) of the Act.[7/]

3. The complaint further alleged that Respondent violated Section 8(a)(1),(2), and (3) of the Act by conditioning the transfer of certain lithographic production employees from the Hudson plant to the Regency plant upon their joining the Steelworkers pursuant to the union-security clause in the collective-bargaining contract between Respondent and the Steelworkers. The Administrative Law Judge recommended dismissing this allegation in view of his finding that Respondent had not given illegal support to the Steelworkers in violation of Section 8(a)(2). As we have found that Respondent did render unlawful support to the Steelworkers with respect to lithographic production employees, the attempt to enforce the union-security clause of the contract as to these employees violated Section 8(a)(1), (2), and (3) of the Act.[8/] We so find.

4. The General Counsel has requested that the certification issued to the Steelworkers in Case 22--RC--5853 be amended to exclude lithographic production employees at the Regency plant. We find merit in this request on two grounds. First, because Respondent violated its duty to inform the Regional Director of the ALA's claim to represent lithographic production employees; and, second, because the amendment is consistent with our remedial Order requiring Respondent to withhold recognition from the Steelworkers unless and until it is certified by the Board.

7/ N.L.R.B. v. Hudson Berlind Corporation, supra; Playskool, Inc., supra.
8/ Ibid.

The Remedy

Having found that Respondent has engaged in certain unfair labor practices, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent violated the Act by recognizing and bargaining with the Steelworkers as the representative of lithographic production employees at the Regency plant, and by applying to such employees the union-security clause in the Steelworkers contract covering production and maintenance employees, we shall order Respondent to withdraw and withhold recognition from the Steelworkers as the representative of the lithographic production employees at the Regency plant unless and until the Board shall certify it as such representative. We shall also order Respondent to cease giving effect to the collective-bargaining contract covering production and maintenance employees between the Steelworkers and Respondent insofar as it is applicable to lithographic production employees at the Regency plant, or to any modification, extension, renewal, or supplement thereof. However, this order shall not be construed to require Respondent to vary any of the substantive terms, conditions, and benefits for employees currently in effect.

Having found that Respondent unlawfully assisted the Steelworkers by entering into a collective-bargaining contract which included lithographic production workers at the Regency plant, and that the union-security clause in that contract insofar as it applies to such employees was unlawful, we shall order Respondent to reimburse all past and present lithographic production employees at the Regency plant for all initiation fees, dues, or other moneys paid or checked off pursuant to the unlawful union-security agreement or any extensions, renewals, modifications or supplements thereof, or any superseding agreement.

Additionally, the amounts of reimbursement shall carry interest at the rate of 6 percent per annum.[9/]

Conclusions of Law

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local One, Amalgamated Lithographers of America, International Typographical Union, AFL—CIO, and United Steelworkers of America, AFL—CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. By entering into a collective-bargaining contract with the Steelworkers which included lithographic production employees together with other production and maintenance employees at the Regency plant, while a real question concerning representation of the lithographic production workers existed, Respondent violated Section 8(a)(2) and (1) of the Act.

4. By attempting to enforce as to lithographic production employees the union-security clause in the collective-bargaining contract between Respondent and the Steelworkers, Respondent violated Section 8(a)(1), (2), and (3) of the Act.

5. By the foregoing conduct, Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, and thereby has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

9/ Hudson Berlind Corporation, supra.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, American Can Company, Greenwich, Connecticut, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Giving unlawful assistance or support to United Steelworkers of America, AFL--CIO, or any other labor organization.

(b) Recognizing the above-named labor organization as representative of lithographic production employees at the Regency plant, unless and until it has been certified as such representative by the Board.

(c) Giving any force or effect to its collective-bargaining contract with the above-named labor organization insofar as it applies to lithographic production employees at the Regency plant, unless and until the said labor organization has been certified as bargaining representative of such employees by the Board, provided, however, that nothing herein shall require Respondent to vary or abandon any of the substantive terms, conditions, and benefits for employees currently in effect.

(d) Encouraging membership in the above-named labor organization by attempting to enforce, as to the lithographic production employees at the Regency plant, the union-security clause in the collective-bargaining contract with the above-named labor organization.

(e) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from United Steelworkers of America, AFL--CIO, as bargaining representative of lithographic production employees at the Regency plant, unless and until the Board shall certify it as such representative.

(b) Reimburse all present and former lithographic production employees at the Regency plant for all initiation fees, dues, and other moneys paid by or withheld from them pursuant to the unlawful union-security clause, in the manner provided in the Remedy section of this Decision.

(c) Post at its Regency plant, Edison Township, New Jersey, copies of the attached notice marked "Appendix."[10/] Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

10/ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

IT IS HEREBY FURTHER ORDERED that the certification issued to United Steelworkers of America, AFL—CIO, in Case 22—RC—5853, be, and it hereby is, amended to exclude lithographic production employees.

Dated, Washington, D.C. MAY 30 1975

Howard Jenkins, Jr., Member

Ralph E. Kennedy, Member

John A. Penello, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

D--9757

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

Pursuant to a Decision and Order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT recognize United Steelworkers of America, AFL--CIO, as the representative of lithographic production workers at our Regency plant, unless and until it has been certified as such representative by the National Labor Relations Board.

WE WILL NOT give any force or effect to the collective-bargaining contract with United Steelworkers of America, AFL--CIO, insofar as it applies to lithographic production employees at our Regency plant, unless and until that Union has been certified as such representative by the National Labor Relations Board.

WE WILL NOT encourage membership in United Steelworkers of America, AFL--CIO, by attempting to enforce as to lithographic production employees at our Regency plant the union-security clause in our collective-bargaining contract with United Steelworkers of America, AFL--CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7 of the Act.

WE WILL withdraw and withhold all recognition from United Steelworkers of America, AFL--CIO, as bargaining representative of lithographic production employees at our Regency plant, unless and until the National Labor Relations Board shall certify the Steelworkers as such representative.

D--9757

WE WILL reimburse all present and former lithographic production employees at our Regency plant for all initiation fees, dues, and other moneys paid by or withheld from them pursuant to the unlawful union-security clause applicable to them, with interest at 6 percent per annum.

AMERICAN CAN COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, 16th Floor, 970 Broad Street, Newark, New Jersey 07102, Telephone 201--645--2100.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JD-681-74
Edison Twp., New Jersey

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

AMERICAN CAN COMPANY

and

LOCAL ONE, AMALGAMATED LITHOGRAPHERS OF AMERICA, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO

Party to the Contract

Case Nos. 22-CA-5619
22-CA-5803
22-RC-5853

Robert M. Archer, Esq., for the General Counsel.
Martin H. Zuckerman, Esq. (Simpson Thacher & Bartlett), New York, N.Y., for Respondent.
James Gill, Esq. (Robinson, Silverman, Pearce, Aronsohn, Sand & Berman), New York, N.Y., for the Charging Union.
David L. Gore, Esq., Pittsburgh, Pa., for the Party to the Contract.

DECISION

Statement of the Case

MILTON JANUS, Administrative Law Judge: The General Counsel issued his complaint in this proceeding on March 25, 1974, after charges filed on September 28, 1973, in Case No. 22-CA-5619, and on March 5, 1974, in Case No. 22-CA-5803, by Local One, Amalgamated Lithographers of America, International Typographical Union, AFL-CIO (ALA). On March 26, 1974, the Regional Director for Region 22 issued a Notice to Show Cause requesting American Can Company (Company or Respondent) and United Steelworkers of America, AFL-CIO (Steelworkers), the parties in Case No. 22-RC-5853, to show cause why the certification issued

in that case should not be amended specifically to exclude all lithographic production employees and why that matter should not be consolidated with Case Nos. 22-CA-5619 and 22-CA-5803 for hearing. Thereafter, both the Company and the Steelworkers filed responses opposing amendment of the certification. The Regional Director nevertheless concluded that there were substantial and material issues concerning the amendment of the certification and issued an order, on April 21, 1974, consolidating Case No. 22-RC-5853 with the unfair labor practice proceeding on which complaint had already been issued. The complaint alleges violations of Sections 8(a)(1),(2),(3) and (5) of the Act.

I held a hearing on these consolidated matters on May 29-31, 1974, at Newark, New Jersey, at which all parties were represented. Briefs have since been received from the General Counsel, Respondent, ALA and Steelworkers, which I have fully considered.

Upon the entire record in the case, including my observation of the witnesses and their demeanor, I make the following:

Findings of Fact

I. The Business of the Respondent

Respondent is a New Jersey corporation with its principal office at Greenwich, Connecticut, which is engaged in the manufacture, sale and distribution of metal cans and related products at its various plants in the United States and Canada. Among these are one at Jersey City, New Jersey (known as the Hudson plant), where production was being phased out in 1973 and 1974, and one at Edison Township, New Jersey (known as the Regency plant) which began operations in 1973.

In the course of its operations during a recent representative period, Respondent caused to be purchased and delivered to its Regency plant goods and materials valued in excess of $50,000 from points outside New Jersey. Respondent admits, and I find, that it is engaged in commerce within the meaning of the Act.

II. The Labor Organizations Involved

The charging party, ALA, and the party to the contract, Steelworkers, are both labor organizations within the meaning of the Act.

III. The Unfair Labor Practices

The Facts

Briefly, this case revolves around the fact that ALA, which had represented a separate unit of lithographic production employees at the Hudson plant for 30 years (where Steelworkers had represented a production and maintenance unit) now finds itself frozen out from any representation

at the new Regency plant, where Steelworkers has been certified for an over-all production and maintenance unit, including lithographic employees. How this came about is detailed below. Because there is virtually no dispute as to the facts, the parties reserve the weight of their arguments to the formulation of the legal issues and their resolution.

The Company's Hudson plant at Jersey City, which has been operating for at least 30 years, comprised eight buildings with over a million square feet of space. Its peak employment in the last few years was about 1300 employees, represented by five labor organizations: Steelworkers for a production and maintenance unit comprising the vast bulk of the employees; ALA for a lithographic unit of about 44 employees at the beginning of 1973, and 24 at the end of that year; and Teamsters, Operating Engineers and Office Workers for other small units, none of which is involved in this case. The Company also operates two other plants in New Jersey, at Hillside and Hoboken, bot of them fairly close to Jersey City. ALA also represented units at these plants, and the three units were covered by a single contract.

On August 8, 1972, the Hudson plant manager, Marifjeren, informed all employees that the Company intended to shut down nine of its canmaking plants, including Hudson, within the next year and a half. On December 20, 1972, he informed the Hudson employees that the Company would be opening a new can manufacturing plant in Edison Township (which is about 26 miles from the Hudson plant), that the new plant would employ about 250 people at full production, and that Hudson would be shut down by the end of August 1973. Marifjeren invited Hudson employees who wished to be considered for employment at the new plant to apply through the Employee Relations Department at Hudson. Eventually, over 300 Hudson employees applied for employment at the new plant, 216 were offered employment there, but only 95 accepted such offers.

Shortly after the December 20 notice was posted, Campione, ALA steward at Hudson, got in touch with Hansen, executive vice-president of ALA, to tell him that Hudson was to be shut down. Hansen then called Leser, an industrial relations official of the Company, on January 16, 1973, to find out what was happening and to express his concern about the lithographic employees losing their jobs. Hansen asked Leser whether the Company was considering applying the ALA contract to the Edison plant, but Leser told him that it would be a new plant, that the Company hoped that it be unorganized, but if it were organized, it preferred a "wall to wall" unit, that is, a single production and maintenance unit including lithographic production employees.

A few days later, Hansen wrote Marifjeren regarding the December 20 notice about opening a new plant at Edison (with a copy to Leser), in which he said:

As an overwhelming majority of the employees whom we represent have signified to us their desire to work at the Edison plant and to continue to be represented by us, we will expect you to continue to recognize Local One as the collective bargaining agent of your lithographic employees.

We are taken aback that you did not see fit to advise us of this development and give us the opportunity to discuss it with you.

About January 20, ALA steward Campione sent Marifjeren a petition signed by the lithographic employees, advising him that they all desired to work at the Edison plant and continue to be represented by ALA. Marifjeren turned the petition over to the Hudson plant's supervisor for employee relations, Ries. On January 30, Cooper, an employee relations counsel at Company headquarters wrote Hansen, in response to Hansen's letter of the 19th, saying that he (Cooper) had concluded that the Company was not obliged to recognize ALA as the representative of any lithographic employees it might employ at its new plant, and that the present contract covering the Hudson lithographic employees did not have to be applied there.

Hansen did not reply to Cooper's letter until March 7, 1973, and his response makes the following points: (1) that the failure of the Company to bargain with ALA regarding the projected shutdown of Hudson and the move to Edison violated the Company's bargaining obligation, since its members would be drastically affected by the move; (2) that nothing more was involved than the transfer of existing lithographic operations and skills already employed at Hudson to another plant; and (3) that ALA expected the Company to take to the new plant as many of the Hudson lithographic employees as wished to go, and that it would continue to represent such a unit there. Finally, Hansen said he expected to negotiate a new contract to replace the one expiring May 1, 1973 (covering Hudson, Hillside and Hoboken).

Cooper immediately responded on March 9 to this effect: (1) The Company has no duty to bargain with ALA as to closing the Hudson plant or opening the new plant; (2) that it had satisfied, for the period of their present agreement, any duty it might have to bargain over the effects of closing Hudson on the lithographic employees, but would bargain for a new agreement covering Hudson; (3) that ALA had not established any right to represent employees of the new Regency plant at Edison, which was not yet opened; and (4) that the Company would consider for employment at Regency all applicants on a nondiscrimimatory basis, but would not automatically hire for the new plant every lithographic employee at Hudson who wished to transfer.

In mid-April Hansen met with Leser, and they negotiated a new 3 year agreement for lithographic employees at Hudson, Hillside and Hoboken. The agreement, in evidence as GC Exh. 7, makes no provision for

the transfer of Hudson lithographic employees to Hillside, Hoboken or Regency even though everyone knew that Hudson would be closed down in late 1973 or 1974, and that Regency would be operating then. Hansen admitted that there was no discussion at the bargaining sessions about the Regency plant, and explained that he did not raise a question about it because of the advice of ALA counsel that since no lithographic employees were then employed at Regency the question of their representation was premature. In any event, the ALA position that its Hudson contract should be applied at Regency had, in Hansen's opinion, been made clear to the Company by their previous correspondence.

A month later, at Hansen's request, he met with Leser and Buly, the Company's Employee Relations Director. Among other matters, Hansen raised the Hudson closing and the Regency opening, and asked if the Company had changed its position on employing lithographic employees from Hudson at Regency, and on his union representing them. Buly replied that it was still their position that Regency was a new plant, that they would like it to stay unorganized, but if it were to be organized they preferred a single plantwide unit. Between this meeting in mid-May, and mid-September, there were no contacts or discussions between ALA and Company officials regarding any aspect of closing down Hudson and opening Regency.

On July 7, 1973, can-making operations began at Regency. Since this date is a turning point in the recital of events, it seems appropriate to break in here to describe the differences in operations between Hudson and Regency. Sheeted plate in either its plain, coated and/or decorated form (a trade term for lithographic printing) is slit into can heights and diameters which are then formed into can cylinders and soldered. A top or bottom is seamed on, and it is then ready for shipment to the customer who fills it and seams on the other end.

Until 1972, Hudson produced a wide variety in sizes and shapes, of metal containers for coffee, shortening, beer, carbonated beverages, motor oil and other products. In that year Hudson ceased manufacturing containers for some of these product lines which were shifted to other Company plants. Hudson also made aerosol cans, and Regency's production is devoted exclusively to that type of container. Some of the can-making equipment for Regency came from Company plants, including Hudson, while other equipment was purchased. The lithographic presses and ovens now in use at Regency are all from Hudson, but other presses and equipment used in the lithographic process at Hudson have been shifted to other plants or will be scrapped. Some lithographic work previously done at Hudson has been transferred to Hillside, and additional lithographic employees have been hired there, none of whom came from Hudson.

At the time of this hearing, in May 1974, Regency had about 200 employees, while its projected full complement will be about 255, in 26 different job classifications. When Regency was being manned, Hudson's employment was down to about 500, from a peak of 1800. As has been already noted, only 216 Hudson employees were offered jobs at Regency, on the basis of merit and skill rather than seniority, and only 95 accepted employment there. Some supervisors at Hudson were transferred to Regency, but many others were assigned to other Company facilities. However, all the lithographic supervisors at Regency came from Hudson.

Continuing the recital of events after Regency opened in July 1973, the next significant date is August 23, 1973, when Steelworkers filed a representation petiton (Case No. 22-RC-5853) for a unit of "all production and maintenance employees including lithographers" at Regency. Of the 64 employees who then constituted the total complement at Regency, there were no lithographic workers. These 64 occupied 16 job classifications, of the 26 to be eventually filled. On or about September 10, the Regional Director for Region 22 approved a Stipulation for Certification upon Consent Election, signed by the Company and Steelworkers, for an election in a unit described as "All hourly rate production and maintenance employees employed by the Employer at its Regency plant . . . " (with the customary exclusions of office clericals, supervisors, guards, etc.). Lithographic employees were neither specifically included nor excluded. The phrase "including lithographers" contained in the petition was omitted from the unit description in the Stipulation, at the suggestion of the Board agent on the assurance of the Company that no lithographic employees were then employed at Regency. The Board agent was apparently not informed that ALA was interested in transferring its unit employees at Hudson to Regency.

The election was scheduled to be held on Friday, September 21. On the 19th, or a few days earlier, ALA steward Campione learned of the pending election from a Hudson employee and had the information confirmed by Ries, a Company employee relations official. Campione then called the union office and spoke to Olmstead, its Director of Organizing, urging him to take some action about the election. Olmstead prepared a letter and had it delivered by hand to the Regional Office about 3 p.m. on September 20. It is addressed to the Acting Regional Director and reads as follows:

> Just learned of representation election scheduled for September 21st at American Can, Pierson Avenue, Edison New Jersey. We object to any inclusion of lithographic workers in whom we have an interest and who do not properly belong in plant wide unit.
>
> /s/ A. Olmstead
> Director of Organizing-
> Financial Secretary

The letter was immediately turned over to Phyllis Schectman, the Board agent assigned to the representation case. She called Ries at the Hudson plant, and asked him if he knew of any interest that ALA had in the election. Schectman did not testify at the hearing, but Ries says he told her that he knew of no interest of the ALA, but that she could call Company headquarters at Greenwich, where the matter was being handled. Ries admitted that he had seen and had sent on to Greenwich, the letter of January 19, 1973, from Hansen of ALA to Plant Manager Marifjeren which indicated his Union's desire to continue to represent at the new plant in Edison the employees in its unit at Hudson. Ries also admitted that he had seen the petition which the Hudson lithographic employees had sent to Marifjeren about the same time, expressing their interest in working at the new plant and being represented by ALA. There is nothing in the record to indicate whether Schectman tried to call Cooper, who had signed to Stipulation for Certification on behalf of the Company, at his office in Greenwich.

She did, however, call Olmstead at the Union's office, but he was out. She left a message for him to call her, which he got the next morning, the day of the election. Instead, Olmstead called the Union's attorney, but was unable to reach him. So far as the record shows, Olmstead did nothing further to alert the Regional Office that ALA had a present or potential interest in representing anyone at Regency.

The election proceeded that day without objection by the Board agent. The ballots were opened and counted, and Steelworkers won by a vote of 84 to 0. No lithographic workers voted as there were none yet employed at Regency.

Sometime in the next week, Mr. Gill, attorney for ALA, called the Regional Office presumably to protest the holding of the election, although there is no direct testimony on the point. In any event, on Friday, September 28, a week after the election, ALA filed unfair labor practice charges against the Company and Steelworkers. (The charge against the Steelworkers was later withdrawn.) The charge against the Company alleged (1) a refusal to bargain from December 20, 1972, with ALA as the bargaining representative of the lithographic production employees at both Hudson and Regency; and (2) unlawful assistance to Steelworkers in becoming the collective-bargaining representative of lithographic employees at Regency to the exclusion of ALA, their rightful representative.

The following Monday, October 1, 1973, the Regional Director issued a Certification of Representative, certifying that Steelworkers was the exclusive representative of the production and maintenance unit at Regency. Under a national agreement between the Company and Steelworkers, the certified unit was added thereunder, and the union security clause in that agreement became immediately effective. Those already employed had 30 days in which to join Steelworkers, while new employees had 30 days after the date of their employement to join. There were then about 90 employees in the unit, or more than 30 percent of the expected full complement of 255, occupying 16 of the 26 expected job classifications, or more than 50 percent of such classifications. The contract bar rule of General Extrusion Company, Inc., 121 NLRB 1165 had been satisfied.

On October 12, Marifjeren and Ries interviewed five lithographic employees at Hudson (Rizzardi, Grupe, Lemke, Amorese and Posnanski) and offered them employment at Regency. They were told that they would have to join Steelworkers, pursuant to the union security provision of the contract covering Regency, that the hourly rates under that contract were less than they were presently receiving under the ALA contract at Hudson, that their prior service with the Company would count toward their pension, but not for seniority at Regency, and that their work week would be 40 hours instead of 32.5 hours as at Hudson. They were given time to consider the offer. A few days later, they all advised a Company representative that they would not accept the offer unless their employment would be under ALA jurisdiction. Undoubtedly, one of the factors in their collective decision not to accept employment at Regency under the Steelworkers contract was their coverage under the ALA pension plan by which they were credited for years of service prior to their employment with American Can, with other employers under contract with their union.

Regency hired its first lithographic employees in December 1973, and lithographic production began there in February 1974. As of the time of the hearing, the end of May 1974, there were 24 lithographic employees still at Hudson and 7 at Regency. The latest estimate as to when Hudson would completely shut down was July 1974.

For the next 5 months, presumably while its September 28 charge was being investigated by the Regional Office, ALA made no attempt to contact the Company as to its claims for representation at Regency. Then, on March 4, 1974, Gill, counsel for ALA, advised the Company that it was adhering to its position that the contract currently in effect for lithographic employees at Hudson also covered the same type of employee at Regency, and requesting the Company to recognize it as the bargaining representative for the four lithographic employees then employed there. The next day, ALA filed its charge in Case No. 22-CA-5803, alleging a violation of Section 8(a)(3), by conditioning the hire of the five employees who had been offered jobs at Regency on their joining Steelworkers, and a violation of Section 8(a)(5) by wrongfully refusing to recognize it, on or about March 4, 1974, as the bargaining representative for the lithographic employees at Regency. The same day, March 5, ALA withdrew the 8(a)(5) portion of its first charge, to the effect that the Company had refused to bargain with it from December 20, 1972, for the lithographic employees both at Hudson and at Regency. The Regional Director approved the withdrawal of this portion of the first charge on March 6, 1974.

Thereafter, as I have previously noted in the "Statement of the Case" the Regional Director issued a consolidated complaint alleging violations of Sections 8(a)(1), (2), (3) and (5), and later, a Notice to Show Cause why the Certification of Representative in Case No. 22-RC-5853 should not be amended to exclude all lithographic production employees (at Regency) from the appropriate bargaining unit.

On May 21, 1974, almost 2 months after issuance of the complaint, and about a week before the start of this hearing, counsel for ALA requested the Company to bargain about the effects of the impending phase-out of lithographic operations at Hudson. A few days later, the Company responded that although no phase-out date had yet been announced, it was imminent, and that it was willing to discuss the matter with ALA at a mutually convenient time. If such bargaining has in fact occurred, either before or after the hearing, I have not been made aware of it.

The allegations of the complaint
and the contentions of the parties

From this welter of facts, frustrated hopes, possible errors, oversights and sharp practices, the General Counsel has constructed a complaint alleging violations of Sections 8(a)(1), (2), (3) and (5). From the allegations of the complaint and his brief, it appears that the General Counsel's theory of the case is as follows: that Respondent, although aware that ALA was demanding recognition for the lithographic production employees at Regency, and while there was a pending question concerning representation over that unit, nevertheless entered into an agreement with Steelworkers which provided that the lithographic employees be included in the production and maintenance unit, and thereafter applied the union-security and checkoff provisions to them; that Respondent urged and solicited the lithographic employees at Hudson to join Steelworkers, and required them to do so as a condition of being transferred to Regency; that the certification in Case No. 22-RC-5853 should be amended to exclude the lithographic production employees at Regency because the Company knew at the time the Stipulation for Certification was entered into that ALA had raised a valid question concerning representation, and was under a duty to inform the Regional Director of all such claims of which it was aware; and that Respondent refused to bargain with ALA as the exclusive bargaining representative of the lithographic employees at Regency.

The two basic propositions relied on to support the General Counsel's theory of the case are, it seems to me, (1) that ALA's representation of the lithographic unit at Hudson and its claim that all lithographic employees hired at Regency would continue to be represented by it, raised a timely question concerning representation which Respondent ignored at its peril (and from which the alleged violations of Sections 8(a)(2) and (3) flow); and (2) that Respondent was obligated to recognize and bargain with ALA at Regency because the transfer of lithographic operations from Hudson to Regency was a "mere relocation" of such operations. (The Section 8(a)(5) allegations.)

ALA, the Charging Union, concentrates in its brief on the argument, identical with that of the General Counsel, that the lithographic operations at Regency were transferred without substantial change from Hudson, so that ALA remained the representative of the lithographic employees at Regency. The conclusions it draws from that argument are that the Company should be ordered to abide by the terms of the Hudson bargaining agreement for all lithographic employees now at Regency, and that the Company should be ordered to reinstate and make whole the lithographic employees at Hudson who were terminated by virtue of its unlawful conduct.

The Company argues that Regency is a new facility, not a relocation of Hudson, but whether it is or not, the fact that there has been no accompanying transfer of a large proportion of Hudson employees to Regency means that no union which represented employees at Hudson was entitled to carry over bargaining rights to the new plant. The Company stresses that ALA never requested it to bargain over the effects on Hudson employees of that plant's phasing out (including the transfer of such employees to Regency) before issuance of the complaint. In any event, the Company argues that even if the move to Regency was a relocation, neither ALA nor the Hudson employees had an absolute or automatic right to transfer to the new plant. As for the Notice to Show Cause why the Steelworkers's certification should not be amended to exclude a lithographic unit, the Company argues that no amendment should be ordered because ALA waived any rights it may have had at Regency by its failure to assert its claim, and that the Regional Director was on notice that the lithographic process employees were to be included in the production and maintenance unit at Regency. Finally, the Company contends that the Section 8(a)(5) allegations of the complaint are barred under Section 10(b), since they relate to matters occurring more than 6 months prior to the filing of any pending charge.

Steelworkers urges that Regency was not a relocation of the Hudson plant, pointing out, as does the Company in its brief, that the new plant is limited to just one of the many product lines manufactured at Hudson, that the machinery at Regency did not all come from Hudson, and that the total number of employees at Regency is a small fraction of those previously employed at Hudson. Furthermore, even if Regency were considered a relocation of Hudson, the Company was still under no obligation to bargain with ALA for a lithographic unit since ALA never represented a majority of the lithographic employees at Regency, nor was its lack of majority due to unfair labor practices committed by the Company. Steelworkers also urges that the allegation of the complaint to the effect that the Company has refused to recognize

and bargain with ALA since January 19, 1973 (when the lithographic employees at Hudson first indicated their interest in transferring to the new plant with their existing ALA representation) is not sustainable by the ALA charge of March 5, 1974, which is the only charge currently related to a Section 8(a)(5) violation. It also argues that its certification for the production and maintenance unit at Regency, issued on October 1, 1973, should not be amended to exclude lithographic employees because the Company was under no obligation to recognize ALA for any employees at Regency. It points out that its petition for the Regency production and maintenance unit specifically included lithographic employees, and that if ALA failed to intervene in time it was its own fault or that of the Regional Director, but not the fault of the Company. Steelworkers also points out that the Company recognized it before Regency had any lithographic employees, and that the election was properly held since the General Extrusion rule as to percentage of employees and job classifications had been met. It takes the position that the lithographic employees at Regency, all of whom were hired after its certification, are a proper accretion to its production and maintenance unit.

Analysis and Conclusions

Although the briefs of the General Counsel and the Respondent, the two major proponents here, touch on all the issues raised by the facts in this case, they do so from different perspectives and with varying emphases.

The General Counsel starts with the proposition that Respondent failed to satisfy the Board's Midwest Piping doctrine (63 NLRB 1060) by not maintaining strict neutrality between the competing claims of ALA and Steelworkers to represent its lithographic employees at the new Regency plant. Based on its failure to maintain such neutrality, the General Counsel argues that Respondent also violated Section 8(a)(2) by agreeing to extend the coverage of its national agreement with Steelworkers to the Regency plant's lithographic employees. It then follows, according to the General Counsel, that Respondent further violated Section 8(a)(2), as well as Section 8(a)(3), by applying the union-security and checkoff provisions of that agreement to the Regency lithographic employees, and by informing five lithographic employees at Hudson that they would be transferred to Regency only if they agreed to join Steelworkers.

Finally, the General Counsel contends that Respondent violated Section 8(a)(5) by refusing to recognize and bargain with ALA for a unit of lithographic employees at Regency. The contention is based on the following points: that the lithographic operation at Regency was a mere relocation of the one at Hudson; that Respondent was required to negotiate the basis and conditions on which the Hudson lithographic employees would be allowed to transfer to Regency, but failed to do so; and that, although ALA did not represent a majority of the lithographic employees at Regency, it would probably have had such a majority but for Respondent's refusal to bargain and its violations of Section 8(a)(2) and (3), since the ALA employees at Hudson had indicated a desire to transfer with continued ALA representation, and would have done so since the two plants were only 26 miles apart.

It should be noted that the General Counsel unlike ALA, does not contend that the ALA contract for Hudson is already applicable to the lithographic employees at Regency.

The Respondent's arguments are addressed to points which are either unraised by General Counsel or barely considered by him. They are the following: there has been no violation of Section 8(a)(5) because the allegations of the complaint pertaining to that Section are barred by Section 10(b), since the basis of the complaint is an act which occurred on January 19, 1973 (ALA's first demand that all Hudson lithographic employees be transferred to the new plant with their representation intact) more than 14 months before the filing of the only extant charge referring to Section 8(a)(5); the complaint seeks to bestow on ALA a status as the representative of lithographic employees at Regency, which it could acquire only by showing that it had been designated as such by the Regency employees; and that ALA waived its rights to bargain about how a transfer of some unit employees from Hudson to Regency might be effectuated by its insistence that the Company had no other option than to transfer all the lithographic employees from Hudson to Regency. Respondent contends that Regency was a new plant and that it had a right to hire whom it wanted there, subject only to its admitted obligation to bargain with ALA, if requested to do so, about the terms and conditions on which the Hudson lithographic employees would be offered jobs at Regency, if offered jobs at all.

As to the alleged violations of Sections 8(a)(2) and (3), Respondent points out that it entered into a collective-bargaining agreement containing a union-security clause with Steelworkers, only after the Regional Director certified Steelworkers as the representative of a production and maintenance unit at Regency, despite the fact that a charge filed by ALA, alleging a violation of Section 8(a)(2) was then pending in the Regional Office.

Respondent does not consider the argument made by the General Counsel that its failure to inform the Regional Office that ALA was claiming representational rights at Regency constituted illegal assistance to the Steelworkers.

Section 8(a)(5). Certain bargaining obligations flow from an employer's decision based on economic considerations, to relocate all or part of his operations. There is, first, the obligation to inform the representatives of his employees of his decision, and to afford them an opportunity to present their views. If the employer cannot be persuaded to retract his decision to relocate, he is still obligated to bargain, upon demand, as to the effects of the relocation on the employees at the old plant, that is, who will be employed at the new plant, under what terms and conditions of employment, and who will be terminated, with what severance rights and benefits. 1/

Here, the Company, with 60 plants throughout the country, decided in 1972 to close down 9 plants, including Hudson, and to realign its operations by moving, purchasing, and scrapping equipment, transferring supervisors, and generally modernizing its business. As part of these efforts it built a new plant, Regency, limiting its production there to the manufacture of aerosol cans, one of the many product lines previously manufactured at Hudson. Lithographic work on other product lines was transferred elsewhere, but all the lithographic work on aerosol cans formerly done at Hudson was transferred without change to Regency. The employee complement at Regency was drastically reduced from that at Hudson both for can production and for lithographic work.

Although the Company did not formally notify ALA (nor Steelworkers either, apparently) of its intention to close Hudson down, it did give all its employees ample notice and kept them informed as to its timetable for phasing out Hudson and opening

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1/ There is also another possible alternative: that the existing contract provides, by its terms, that it shall apply to the relocated operation. See Helrose Bindery, Inc., 204 NLRB No. 88, and The Rittling Corporation, 203 NLRB No. 59. I find, in the instant case, that neither the expired nor the new contract between Respondent and ALA for the Hudson plant contains such a provision. A related but separate question, whether ALA's bargaining rights for the Hudson unit (irrespective of any contract provision) are transferable to similar work performed at Regency, is discussed hereafter.

Regency. As a practical matter, ALA was immediately made aware of the Company's decision to close Hudson down, but never seriously sought to persuade it to do otherwise. The complaint does not allege that the Company's failure to notify ALA of its intentions as to Hudson is an independent violation of Section 8(a)(5), nor does the General Counsel argue that, if it is a violation, it should be remedied in any particular manner. 2/ Under these circumstances, I make no finding as to whether the Company's failure to notify ALA of its decision to close Hudson down was in violation of Section 8(a)(5).

It is well-established, from the "plant relocation" cases cited below 3/ that a union representing employees at a plant whose operations are partially or completely terminated and relocated elsewhere is entitled to negotiate the bases and conditions on which the employees affected by the termination may transfer to the new plant and thereby continue to be employed. If, on the basis of such bargaining, the employees at the closed-down plant constitute a majority at the new, then their bargaining representative is unaffected by the move. But if the employer has refused to bargain about the effects of the relocation on its employees, the Board will infer, if the old and new plants are not too distant, and if the new is a continuation of the old in terms of production and equipment, etc., that the employees would have transferred but for the employer's illegal action, so that their union at the old plant continues to be their majority representative at the new.

A recent Board case exemplifying these principles is Fraser & Johnston Company, 189 NLRB 142, and since all the parties recognize its pertinency to the case here, I will summarize its facts and holdings in some detail.

2/ See Regal Aluminum, Inc., 190 NLRB 468, and McLoughlin Manufacturing Corporation, 182 NLRB 958, enf'd as mod., sub nom. International Ladies Garment Workers Union v. N.L.R.B., 463 F. 2d 907 (C.A.D.C.), where the Board awarded backpay to the affected employees because of the employer's failure to notify the bargaining representative of its intention to relocate its operations.

3/ Fraser & Johnston Company, 189 NLRB 142, enf'd in part 469 F. 2d 1259 (C.A. 9), The Pierce Governor Company, Inc., 164 NLRB 97, aff'd 394 F. 2d 757 (C.A.D.C.), Cooper Thermometer Company, 160 NLRB 1902, enf'd in part 376 F. 2d 684 (C.A. 2), and Die Supply Corporation, 160 NLRB 1326, enf'd 393 F. 2d 462 (C.A. 1).

The Company (Fraser) was a wholly-owned subsidiary of Westinghouse. Fraser was engaged in its San Francisco plant in the manufacture of heating and cooling equipment, while Westinghouse operated a plant at San Lorenzo, 26 miles away, where it manufactured switchboard panels for the electrical industry. The employees at the Fraser plant were represented by three unions in what was substantially a production and maintenance unit, while the Westinghouse employees were represented by another union, IBEW. Fraser employed over 300 hourly rated employees at San Francisco, while Westinghouse had about 85 employees at San Lorenzo.

Fraser notified the San Francisco unions in July 1968 that it was considering moving to Westinghouse's San Lorenzo plant because of the inadequacy of its present location. In April 1969, Fraser began to move its inventory and machinery to San Lorenzo, and full production began there in August. The San Francisco plant had been shut down in July, and all the hourly rated employees were terminated. All requests by the San Francisco unions and the employees there for transfer to San Lorenzo with the retention of existing rights were rejected. In the meantime, Fraser had negotiated with IBEW at San Lorenzo on changes in the latter's contract with Westinghouse regarding new job classifications for the influx of new employees who had been hired to perform the work done at San Francisco.

With the new employees hired at San Lorenzo, IBEW represented more than twice as many employees as it had previously represented, in a variety of new job classifications. In the meantime, Westinghouse had relocated its San Lorenzo operations to another plant 200 miles away. Thus, Fraser was established at San Lorenzo, carrying out the same operations with the same machinery, operating methods and supervisors that it had used at San Francisco, but with another union.

Fraser's asserted reason for not considering the request of the San Francisco unions for transfer of their unit employees to San Lorenzo with their bargaining rights and existing contracts, was that it was legally obligated to apply the existing IBEW contract at San Lorenzo to its relocated operation there. It offered the unions only an agreement for severance pay coupled with the final termination of the represented employees and the extinguishment of their contractual and recognitional rights.

The Board rejected the Company's contention that it could not be held to have violated Section 8(a)(5) by not bargaining over transferring the San Francisco employees to San Lorenzo because it was legally committed to recognize IBEW as the representative of all employees at San Lorenzo, holding instead that bargaining over the transfer of the San Francisco employees was obligatory, and that the Company had failed to do so.

The essential element in finding that Fraser "refused to bargain" with the San Francisco unions was its refusal to consider their request that their unit employees be transferred to San Lorenzo, based on its alleged commitment to IBEW. As the majority opinion in the Decision put it:

> Respondent was, of course, not free to make this commitment to the IBEW, and its commitment was itself an unfair labor practice. But it is that commitment which led Respondent to refuse even to consider the proposals of the San Francisco unions that San Francisco employees be permitted to follow their jobs to San Lorenzo. Had Respondent bargained in good faith concerning these proposals, that is to say without regard to its commitment to the IBEW, it is highly unlikely that it would have refused to permit those San Francisco employees who wished to transfer to do so, for a majority of the employees of each of the San Francisco units had indicated a desire to transfer to San Lorenzo. These employees were skilled in the necessary work tasks and they could have worked in San Lorenzo -- only 25 miles from San Francisco -- without moving their homes. 189 NLRB at 143. (Underscoring supplies.)

Thus, the vice in Fraser's violation of Section 8(a)(5) was in imposing an illegal condition to consideration of the Unions' proposals, not in refusing to grant them. As Chairman Miller said in his opinion, concurring in part and dissenting in part: [footnote 5, at page 144]

> The violation found is based on Respondent's refusal to bargain in good faith over the transfer rights of the San Francisco employees after shutdown of that location. We do not hold that Respondent was required to transfer any San Francisco employees, only that Respondent was required, but failed, to bargain over that issue. We are not at liberty to presume that good faith bargaining would have produced any agreement to require transfer of San Francisco employees. See H. K. Porter Co. v. N.L.R.B., 397 U.S. 99.

Cooper Thermometer Company, 160 NLRB 1902, is another plant relocation case where the old and new plants were also about 25 miles apart, a distance considered to make it likely that employees at the shut-down plant would have transferred if given the opportunity. Here, too, as in Fraser & Johnston Company, supra, independent violations of Section 8(a)(5) by the Company (refusing to furnish information on changes in classifications, rates and schedules, and dealing individually with employees in derogation of their bargaining representative) negated its claim that it had bargained in good faith with the Union over conditions of transfer to the new plant.

I find there are significant differences between this case and Fraser & Johnston, Cooper Thermometer and Die Supply, supra. In those cases the Board found violations of Section 8(a)(5) in the Respondents' refusal to recognize and bargain at the new plants with the unions which represented employees at the old plant, partially on the ground that the new plant was no more than the old plant in a different location. Machinery, manufacturing processes and supervision were transferred practically intact from one to the other facility with nothing changed but the site. In Die Supply Corporation, 160 NLRB 1326, at 1341, the Trial Examiner found that there had been no change in anything except location and the termination of senior employees; in Cooper Thermometer Company, 160 NLRB 1902, at 1912, the Trial Examiner held that the new plant was not established as an additional facility, but was instead a transposition or removal of the employer's business from one location to another; while in Fraser & Johnston Company, 189 NLRB 142 (footnote 3), the Board found that the employer's operation at San Lorenzo was a continuation of the operations at its former plant at San Francisco, while the Court of Appeals, in enforcing the Board's order in part, observed that "In all material respects — company name, products, machinery, operational methods and supervision — the Company's operations in San Lorenzo were a continuation of the operations it had formerly conducted in San Francisco." 469 F. 2d 1269 (C.A. 9), 91 LRRM 2964, at 2966.

In this case, the Regency plant was not a simple removal of Hudson to a new location. Where Hudson had been the site for the manufacture of a wide range of products, Regency is limited to the manufacture of a single product line. It is of course true that the Company's business nationwide is the manufacture of metal containers, and that their size or what they are filled with may be considered to be irrelevant to its basic processes. However, manufacturing processes undoubtedly vary with the size or shape of the product, and the reduction of many product lines to a single line represents a much more substantial change in the Company's business and production than occurred in the other "relocation" cases mentioned above.

Furthermore, much of the supervisory staff employed at Hudson was no longer needed at Regency and was transferred elsewhere, while only part of the machinery at Hudson was physically moved to Regency. These are the expected consequences of a substantial diminution in the number of production and maintenance workers needed at Regency. Employment at Hudson was about 500 when the decision was reached to close it down, while the maximum employment at Regency will be just half that. So substantial a reduction in force is incompatible with a conclusion that Regency was nothing more than a continuation of Hudson.

I am aware that the General Counsel and ALA do not deny that Regency is something more than Hudson at a remove of 25 miles. They argue that even if Regency is not a continuation of Hudson, yet the lithographic department at the new plant is exactly the same as at the old, with employees exercising the same skills on the identical machinery. Even that, however, is only partially true. Here too, employment in the Regency lithographic department will be about half of what it was at Hudson, and although all the lithographic equipment now at Regency came from Hudson, other equipment no longer needed at Regency has been scrapped or sent to still other plants. I find, therefore, that neither the lithographic department at Regency nor the entire plant is a "mere relocation" or continuation of the business and processes formerly conducted at Hudson.

An employer who opens an additional plant by transferring machinery from a number of his other plants, including one which is being shut down, is not obligated to hire at the new facility those employees who manned the machinery being transferred. Neither jobs nor representation rights adhere to specific pieces of machinery or manufacturing processes, and flexibility in meeting a changing economic situation requires flexibility in the right to hire and fire. Changes and adjustments of the magnitude present here necessitate a freer hand in adjusting employment to new conditions than if the employer was merely moving an existing facility to a new site. I therefore conclude that the Company was correct in asserting that it had no absolute or automatic obligation to recognize ALA as the bargaining representative of lithographic employees at Regency, merely because it had represented such employees at Hudson. It did, however, have an obligation to bargain with ALA, if requested to do so, about the effects of closing down Hudson on the employees whom it represented there.

The first communication between ALA and the Company after it learned that a new can manufacturing plant would be opened 26 miles from Hudson was a call from Hansen, executive vice-president of ALA to Leser, an industrial relations official of the Company, on January 16, 1973. After expressing concern about lithographic employees losing their jobs, Hansen asked Leser whether the Company was considering applying the current contract at Hudson to the new plant. Leser told him in effect that none of the contracts at Hudson would be carried over to the new plant. A few days later Hansen wrote the Hudson plant manager and Leser that ALA expected to be represented at the Edison Township plant.

Hansen again wrote to the Company about a month later, March 7, 1973, repeating his claim that ALA should continue to represent a lithographic unit consisting of as many Hudson employees as wanted to transfer to the new plant. He also protested the Company's failure to bargain about the projected shutdown of Hudson, since ALA members were affected by the move. The Company responded a few days later that it had no duty to bargain about closing Hudson or opening the new plant, that any duty it might have to bargain over the effects of closing Hudson was covered by its existing contract, and that it would bargain for a new agreement to be applied to Hudson. It also advised Hansen that the Company would consider for employment at Regency all applicants on a nondiscriminatory basis, but would not automatically hire there every lithographic employee who wished to transfer.

A month later, Hansen met with Leser and negotiated a new 3-year agreement covering the three New Jersey plants, including Hudson, where it was the bargaining representative. Hansen did not ask for any special benefits for employees who might be terminated because of Hudson's closing, nor did he request separate negotiations on the effects of such closing on Hudson lithographic employees. A month later, Hansen met with Leser and his superior, Buly, and again Hansen limited himself to discussing whether the Company would consider employing Hudson lithographic employees at Regency, with his union representing them. Buly reiterated the Company's claim that Regency was a new plant and, in effect, that neither employees nor bargaining obligations at Hudson would be brought over to Regency. Hansen did not, as an alternative, request bargaining over any other aspects of the move.

There was no attempt by the Company to conceal the fact that production would begin at Regency in July 1973, and that inevitably all lithographic work at Hudson would be transferred there. Nevertheless, ALA made no attempt to negotiate with the Company about the effects of the closing of Hudson on its members employed there. In late September 1973, when ALA filed its first charge with the Board, it again claimed representation rights at Regency, but not that the Company had refused to bargain with it over the effects of the closing or the conditions on which applications for employment at Regency would be considered. After another 5 months, ALA filed a second charge which again alleged only a wrongful refusal to recognize it as the bargaining representative for lithographic employees at Regency.

Thus, from January 1973 to March 1974, ALA consistently claimed that its bargaining status at Hudson entitled it to represent all lithographic employees to be hired at Regency. Not until May 21, 1974, two months after issuance of the complaint, did ALA request the Company to bargain with it about the effect on its members of the final closing of Hudson. The Company replied immediately that it was willing to discuss the matter.

I see no need to engage in an extended discussion about the ALA requests for bargaining. I am satisfied that they were limited to the demand that only ALA-represented employees be hired at Regency, and that ALA continue to represent them there. I have already found that Regency was not a continuation of Hudson, and that ALA had no inherent right to represent whomever the Company hired for its lithographic operations at Regency. I now find that at no time before the issuance of the complaint did ALA request bargaining on what it was entitled to - meeting and negotiating with the Company on such matters as severance benefits for employees terminated at Hudson or the factors to be used by the Company in deciding whom to hire at Regency. The Company need not have agreed to whatever demands of this sort ALA might present, but ALA never even put it to the test. I conclude that ALA has waived its rights to bargain about the effects on Hudson employees of that plant's closing. 4/

Two further points need to be cleared up before I conclude my discussion of the Section 8(a)(5) aspects of the case.

1. In Fraser & Johnston and Cooper Thermometer, supra, the Board held that the operations of the relocated plant were sufficiently similar to those of the closed plant so that the representative status of the unions there should be transferred to the relocated plant. Part of the consideration for the Board's findings in those cases was that the employers had committed independent violations of Section 8(a)(5), either by insisting on an illegal condition to bargaining (in Fraser & Johnston) or by refusing to furnish pertinent job data (in Cooper Thermometer), and that these violations had frustrated the unions' attempts to bargain about the effects on their members of the plant relocation.

If the Board should disagree with me that Regency was not a continuation of Hudson but rather a quite different operation, I hereby observe that the Company did nothing to frustrate the course of bargaining by committing the kinds of violations noted above. In my opinion then, Fraser & Johnston and Cooper Thermometer are distinguishable from this case, even if the Board finds that Regency, or its lithographic department, is only a continuation of its Hudson counterpart. In any event, my finding that ALA waived its right to bargain over "effects" is further support for the conclusion, which I hereby reach, that the allegations of the complaint with respect to Section 8(a)(5) should be dismissed.

4/ U.S. Lingerie Corporation, 170 NLRB 750, and Montgomery Ward & Co., 137 NLRB 418.

2. The Company and Steelworkers argue forcefully that Section 10(b) bars the refusal to bargain allegations because the only charge dealing with that matter is dated March 5, 1974, or 14 months after ALA first asserted its claim that its status at Hudson carried over to Regency. I find no merit in the contention, since ALA continued to put its claim forward well within 6 months of its March 1974 charge. 5/

Section 8(a)(2) and (3). When Steelworkers filed its petition on August 23, 1973, to represent a production and maintenance unit, including lithographers, at Regency, the plant had been in operation little more than a month. No lithographic workers had yet been employed, nor were there any on September 10, when the Regional Director approved the Stipulation for Certification upon Consent Election, on September 21, when the election was held, or on October 1, when the certification was issued. No lithographic workers were employed at Regency before December.

The General Counsel contends that the Company granted illegal support to Steelworkers when it agreed to extend their nationwide contract to the Regency plant, following the certification to Steelworkers on October 1. The basis of the contention is that the ALA claim to be recognized at Regency raised a question concerning representation which the Company ignored, and that it deliberately concealed the ALA claim from the Regional Director when he approved the Stipulation for Certification. What is to be regarded as a "real" question concerning representation, or when a rival union's claim is not clearly unsupportable and lacking in substance 6/ must, of course, turn on the specific facts of each case. Here, it is true, the Company did not inform the Regional Office that ALA was asserting a claim that it should be recognized as the representative for all lithographic employees who would eventually be hired at Regency, but a Company official, Ries, did tell Board agent Schectman, when she asked him if he knew of any ALA interest at Regency, that she should call Company headquarters where Cooper, the Company official who had signed the Stipulation was located. Schectman apparently was satisfied that ALA had no supportable claim to participate in the election because there were no lithographic workers then employed at Regency.

5/ Fraser & Johnston Company, 189 NLRB 142, 151 (fn. 51); The Pierce Governor Company, Inc., 164 NLRB 97, 101, and Cooper Thermometer Company, 160 NLRB 1902, 1915.

6/ Playskool, Inc., 195 NLRB 560.

The Company had rejected the ALA claim on the ground that it was entitled to hire at Regency without regard to the bargaining rights of any of the unions at Hudson. It seems to me that this was a legal position which the Company maintained at its peril — if in fact, ALA had even a colorable claim to represent lithographic employees at Regency, based on its status at Hudson, then the Company would have violated Section 8(a)(2) by failing to inform the Regional Office of such claim, once the petition was filed. But since I have previously found that the Company had no obligation to transfer ALA's bargaining status from Hudson to Regency or to recognize it at Regency, it follows that the Company's position was in fact correct. Moreover, it is clear that the Regional Office had been alerted to a possible representation claim by ALA at Regency, when it filed its opposition to holding the election in its letter of September 20, and in its charge of a Section 8(a)(2) violation, filed after the election but before certification of the Steelworkers. If there was negligence on the part of the Regional Office, although I make no such finding, there is no more reason to penalize the Steelworkers and the Company, who acted pursuant to the certification, than the ALA.

I therefore hold that the Company's position that ALA was not entitled to assert any bargaining rights at Regency, before or after the election, was in fact correct, and that the Company has not given Steelworkers illegal support by entering into a contract with it, following the certification, nor violated Section 8(a)(3) by advising the ALA members from Hudson, to whom it offered jobs at Regency, that they would be subject to the union-security provisions of the Steelworkers contract if they accepted its offer. I shall therefore recommend dismissal of the Section 8(a)(2) and (3) allegations of the complaint.

On March 26, 1974, the Regional Director issued to the Company and Steelworkers a Notice to Show Cause why the certification to Steelworkers in Case No. 22-RC-5853 should not be amended specifically to exclude all lithographic production employees. The parties objected to amending the certification, but the Regional Director, on April 12, 1974, believing that substantial and material issues had been raised which could best be determined by the taking of record testimony, consolidated that matter with the instant unfair labor practice case.

I have considered the question whether the certification should be amended and have decided that it should not be. I have found that the Company has not committed any unfair labor practices, particularly with reference to granting Steelworkers unlawful assistance in seeking and gaining certification. I also note that Regency employed a representative complement of employees, as measured by its satisfying the General Extrusion case standards when Steelworkers was certified for a production and maintenance unit.

Although lithographic production employees were separately represented at Hudson, and could properly have been so represented at Regency, there is no Board policy against the inclusion of such workers in a production and maintenance unit. I therefore find that once lithographic employees were hired at Regency they were properly added to the overall production and maintenance unit as an accretion.

Pursuant to the Regional Director's Order of April 12, 1974, I hereby transfer Case No. 22-RC-5853 to the Board for such action as it sees fit to take.

Conclusions of Law

1. American Can Company is an employer engaged in commerce and in activities affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local One, Amalgamated Lithographers of America, International Typographical Union, AFL-CIO, and United Steelworkers of America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondent has not engaged in any unfair labor practices alleged in the complaint.

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended: 7/

ORDER

It is hereby recommended that the complaint be dismissed in its entirety.

Dated at Washington, D. C.

Milton Janus
Administrative Law Judge

7/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

TRANSCRIPT OF PROCEEDINGS BEFORE
ADMINISTRATIVE LAW JUDGE

BEFORE THE NATIONAL LABOR RELATIONS BOARD

TWENTY-SECOND REGION

In the Matter of:	:	
AMERICAN CAN COMPANY	:	
Respondent	:	
- and -	:	CASE NOS.
LOCAL ONE, AMALGAMATED LITHOGRAPHERS OF AMERICA, INTERNATIONAL TYPOGRAPHICAL UNION, AFL - CIO	:	22-CA-5619
	:	22-CA-5803
Charging Party	:	22-RC-5853
- and -	:	
UNITED STEELWORKERS OF AMERICA, AFL - CIO	:	
	:	
Party to the Contract	:	

Federal Building
970 Broad Street
Newark, New Jersey
Wednesday, May 29, 1974

The above-entitled matter came on for hearing, pursuant to Notice, 11:00 a. m.

BEFORE:

Honorable MILTON JANUS, Administrative Law Judge

APPEARANCES:

ROBERT M. ARCHER, ESQ. National Labor Relations Board, 22nd Region, 970 Broad Street, 16th Floor, Newark, New Jersey; appearing as Counsel for the General Counsel.

APPEARANCES (Continued):

MARTIN H. ZUCKERMAN, ESQ.	Simpson, Thatcher & Bartlett, One Battery Plaza, New York, New York; appearing on behalf of the Respondent.
JAMES GILL, ESQ.	Local One, Amalgamated Lithographers of America, International Typographical Union, AFL - CIO, 230 Park Avenue, New York, New York; appearing on behalf of the Charging Party.
DAVID L. GORE, ESQ.	United Steelworkers of America, AFL - CIO, 5 Gateway Center, Pittsburg, Pennsylvania; appearing on behalf of the Party to the Contract.

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Edward Hansen	49	64	67	
George Grupe	69	80	81	
Robert Rizzardi	83	89	92	94
Angelo Campione	98	101		
Edward Lemke	102	113	116	

EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
General Counsel's:		
GC-1 (a) thru (l)		3
GC-2		4
GC-3	53	55
GC-4	55	56
GC-5	57	58
GC-6	59	59
GC-7		60
GC-8		63
GC-9	92	100
GC-10		97
Respondent's:		
R-1		5
R-2	90	96
R-3		116

I N D E X (Continued)

EXHIBITS (Continued)	FOR IDENTIFICATION	IN EVIDENCE
Party to the Contract's:		
PC-1		5

P R O C E E D I N G S

11:00 a. m.

JUDGE JANUS: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board, in the matter of American Can Company, Case Numbers 22-CA-5619 and 22-CA-5803 and 22-RC-5853.

My name is Milton Janus.

All parties have been informed of the procedures of formal hearings before the Board by service of a statement of standard proceedings, with a complaint and notice of hearing. Additional copies of the statement are available from counsel for the General Counsel upon request.

Will counsel and other representatives of the parties please state their appearances for the record?

MR. ARCHER: For the General Counsel, Robert M. Archer.

MR. ZUCKERMAN: For American Can Company, Martin H. Zuckerman.

MR. GORE: For the United Steelworkers of America, David L. Gore.

JUDGE JANUS: I understand from off the record conversations that a representative for the Amalgamated Lithographers, ITU, has been detained and will be here some time this afternoon.

Mr. Archer, would you please introduce the pleadings and other formal papers?

MR. ARCHER: May we go off the record for a moment?

JUDGE JANUS: Off the record.

(Discussion off the record.)

JUDGE JANUS: On the record.

MR. ARCHER: Your Honor, the parties have been shown General Counsel's Index and description of formal documents and have had an opportunity to review same. They are marked 1 (a) through 1 (l).

At this time we would like to offer them into evidence.

JUDGE JANUS: Mr. Zuckerman?

MR. ZUCKERMAN: No objections.

MR. GORE: No objections.

JUDGE JANUS: General Counsel's 1 is received.

(The document above-referred to was marked General Counsel's Exhibit No. 1(a) thru (l) and received in evidence.)

JUDGE JANUS: Mr. Archer, I understand you have something else to introduce, or is that Mr. Zuckerman?

MR. ZUCKERMAN: Your Honor, I believe at the pretrial we had discussions as to whether or not the parties should put into the record our responses to the Notice to Show Cause that was issued in this proceeding. At that time it had been agreed among all the parties, including the Board, that these documents would be so included.

At this time, your Honor, I'd like to hand up a copy of

a letter dated April 3, which was American Can's response to the Notice to Show Cause, a letter signed by myself.

JUDGE JANUS: Is the Notice to Show Cause included in GC-1?

MR. ARCHER: It should be included.

JUDGE JANUS: Would you have a copy of it that we can attach to GC-1? Is it listed in the index and description of documents?

MR. ARCHER: It isn't, your Honor.

JUDGE JANUS: If you don't have it handy, why don't we delay it for the present-- You have it?

MR. ARCHER: Yes.

JUDGE JANUS: Let's introduce that first as General Counsel 2.

MR. ARCHER: At this time, your Honor, I's like marked General Counsel Exhibit 2, Notice to Show Cause, dated March 26, 1974, in Case No. 22-RC-5853.

JUDGE JANUS: I presume there's no objection?

MR. ZUCKERMAN: No objection.

MR. GORE: No objection.

JUDGE JANUS: I'll receive General Counsel's 2 and Respondent's 1.

(The document above-referred to was marked General Counsel's Exhibit No. 2 and received in Evidence.)

(The document above-referred to was marked Respondent's Exhibit No. 1 in evidence.)

MR. GORE: I would also like to introduce a response to the Notice to Show Cause, filed by the Steelworkers on April 5, 1974, in Case No. 22-RC-5853. There's an attachment of the collective bargaining agreement.

MR. ZUCKERMAN: If I might, there's one thing on this. Is it a copy of a local agreement that is referred to in the master agreement?

MR. GORE: The only thing we submitted with the response was a copy of the master agreement and attachment of a previous NLRB decision involving lithographic employees at the Morrisville, Pennsylvania plant.

JUDGE JANUS: Off the record.

(Discussion off the record.)

JUDGE JANUS: On the record.

The response of the United Steelworkers and attachment, which is the agreement between American Company and the Steelworkers, will be marked as Exhibit 1 for the Party to the Contract, United Steelworkers.

(The document above-referred to was marked as Party to the Contract's Exhibit No. 1 in evidence.)

JUDGE JANUS: Two copies of each exhibit have to be supplied, so the parties each make sure that they obtain another

copy for the Reporter.

Are there any other exhibits to be introduced at this time?

Are there any preliminary motions?

MR. ZUCKERMAN: Your Honor, we have already filed a motion to strike a portion of the Complaint, and that motion is still outstanding. It is my understanding that we have not received the Response as of yet from Washington concerning that motion.

JUDGE JANUS: I suppose when you do receive a response it will be to refer to the Administrative Law Judge.

I've read them hurriedly, but I haven't studied them. Is it something that we can put off for a while? Does it affect the immediate conduct of the hearing?

MR. ZUCKERMAN: I believe it does, your Honor, because it is a motion to strike all portions of the Complaint that relate to Section 8 (a) (5) violations. To that extent, if, of course, the motion is granted, my burden becomes that much less at the opening of the trial.

JUDGE JANUS: Mr. Archer?

MR. ARCHER: I agree with respect to Mr. Zuckerman's position that the decision with respect to his motion to strike should be made for it does affect my conduct and presentation of my case.

JUDGE JANUS: Have you filed a response to his motion?

MR. ARCHER: Yes, your Honor, we have.

JUDGE JANUS: Let us introduce the Motion and the Response, and then we'll take a short recess while I read the papers.

MR. ARCHER: It's in the formal papers.

JUDGE JANUS: Both?

MR. ZUCKERMAN: Both, your Honor.

MR. ARCHER: 1 (i) would be the motion to strike and 1 (j) is our motion in opposition.

JUDGE JANUS: Mr. Gore, do you have any comments, or have you filed any papers?

MR. GORE: I have not filed any papers or any preliminary motions, your Honor. I do intend, of course, realizing your Honor will not make a ruling on it, to move that the Case 22-RC-5853 be severed from this motion for various reasons. I would like to enunciate those in my brief, if I may, but for the purpose of this hearing, and to give the Judge something to consider, our position is that the General Counsel and Charging Party are attempting here to resolve a dispute between the work assignments through the use of arbitration representational position, which we feel is contrary to Board Law. For that reason, we would move to sever and to dismiss. I will argue that in my brief.

JUDGE JANUS: By the representation position, you mean the motion to clarify the certification?

MR. GORE: That's correct.

JUDGE JANUS: Let's take a recess while I read over the documents.

JUDGE JANUS: On the record.

I've read Respondent's motion to strike the 8 (a) (5) allegations of the Complaint, which is listed as General Counsel's Exhibit 1 (i), and the General Counsel's motion in opposition to Respondent's motion to strike, which is included in General Counsel's Exhibit 1, as Paragraph j.

The motion to strike contains two sections; one relating to matters which occurred more than six months prior to the filing of any pending charge. As to that, as I understand, the General Counsel's opposition relates merely to the fact that testimony may be introduced to explain the other allegations of the Complaint which relate to 8 (a) (5). Let's consider that first.

Mr. Zuckerman, do you have any comments on General Counsel's opposition?

MR. ZUCKERMAN: Yes, I do. If I may respectfully request that you look at Paragraph 27 of the Complaint. I think the Complaint amply demonstrates that General Counsel's position in its motion in opposition to my motion to strike was an afterthought. Paragraph 27 of the Complaint states in very clear terms: Since on or about January 19, 1973, all times material herein to date, Respondent did refuse and continues

to refuse, et cetera.

Now, that paragraph is an out and out allegation of a violation of the National Labor Relations Act, and the Board has alleged that to have occurred on or about January 19, 1973.

That paragraph drawn by General Counsel in the Complaint totally denies any contention made by General Counsel now that any of this material is strictly "background material."

JUDGE JANUS: Mr. Archer, there seems to be an inconsistency between the Complaint and your opposition to Respondent's motion to strike with respect to the January 19, 1973 date.

MR. ARCHER: Your Honor, with respect to Paragraph 27, we contend, and we will show through testimony here, that on or about January 19, 1973, the employer had an obligation to bargain and recognized the lithographers. However, we do not contend an independent violation from January 19, 1973; rather what we're saying, it was a continuing demand from that date. The violation itself, of course, would be within the six-month period.

I think referring to Page 2 of our motion in opposition, we said that the Respondent had a duty to recognize and bargain with the lithographers, which continued at all times material herein. Obviously, the January 19, 1973 date is outside the 10 (b) period, but matters relating within that period, within that six-month period, are relevant to, are actually volitive

conduct.

Further, I think it's rather clear in Paragraph 31 that these other acts that Respondent's counsel desires to strike are clearly in the contention of background.

JUDGE JANUS: As of what date do you consider a violation of Section 8 (a) (5) is cognizable by the Board? Would you mean six months prior to the filing of the March 4th charge, or would you consider it is six months prior to the earlier charge? What is that, September 23rd?

MR. ARCHER: September 12th, your Honor.

JUDGE JANUS: In September 1973.

MR. ARCHER: No. What we're saying, your Honor, at all material times since January 19, 1973, there was a continuing demand to bargain and recognize. However, obviously, the six-month period would have to be from the filing of the 8 (5) charge.

JUDGE JANUS: Don't other allegations in violation of the act defend the date on which the refusal to bargain occurred? Is there an 8 (a) (2) allegation?

MR. ARCHER: Yes, your Honor, with respect to those 11 thru 14 they are. The 8 (2) in part is dependent upon those facts.

JUDGE JANUS: Would they go back to January 1973 or to the six-month period preceding the filing of the first charge?

MR. ARCHER: Yes, your Honor, they would.

JUDGE JANUS: Is the 8 (a) (2) violation independent of the refusal to bargain allegation?

MR. ARCHER: Yes, your Honor.

JUDGE JANUS: Can it stand on its own?

MR. ARCHER: Yes, it can, your Honor.

JUDGE JANUS: Mr. Zuckerman?

MR. ZUCKERMAN: Your Honor, I believe the purpose of the Complaint is to put Respondent on Notice as to what the allegations against it are. I make that very simple point to start with in saying no way does this Complaint say what Mr. Archer is now attempting to contend.

I also would like to point out, your Honor, that Mr. Archer has miscited one case in his response, the Magretty and Sons Case, which he cites to support his proposition, was reversed by the 6th Circuit. I'm sorry, I do not have the official citation, but the unofficial citation is at 83 LRRM 2674.

The case simply stands for the proposition, your Honor, as you had previously alluded to, that in those instances where the material fact occurs on a particular date, and the Respondent then sets its defenses on that particular date, that is the governing day for the 10 (b) purposes.

JUDGE JANUS: What date would that be here, then?

MR. ZUCKERMAN: They're alleging January 19th as the date of the violation, of the starting of the violation by

American.

I suggest, your Honor, that it was at that time, if any violation occurred, and I'm certainly not by any way conceding that a violation occurred, but if a violation did occur on that date, the company set its defenses on that date and has never changed its position since.

Now, what General Counsel has done in the first instance was to allege January 19th as the date. No other date appears in this Complaint. That on its face, I contend, is 10 (b). Moreover, if he's now trying to bring it within the six-month period. All he's attempting to do is take that which occurred in January 19, 1973, pick it up in mass, move it without changing anything. I suggest they can't do that.

JUDGE JANUS: Even January 19th? Isn't that outside the 10 (b) period of the first charge?

MR. ZUCKERMAN: Yes, your Honor, it was.

MR. ARCHER: It would be an explanation of background. There were certain incidents.

JUDGE JANUS: What occurred on January 19, 1973?

MR. ARCHER: Your Honor, on that date, the executive vice-president of the Amalgamated Lithographers in a letter to the plant manager at the then Hudson Plant of American Can demanded recognition on behalf of the lithographers, as they might move to Edison.

This case involved a plant relocation from American Can's

Hudson facility, which is located in Jersey City, to its Regency facility, which is located in Edison. On that date, the lithographers, we'll use the vernacular, laid a claim to that work.

JUDGE JANUS: Did the lithographers already represent a unit of the old plant?

MR. ARCHER: Yes, they did. They represented a unit continuously, I believe, for about twenty-five years. I think that was admitted in the Answer.

JUDGE JANUS: When was the facility moved?

MR. ARCHER: Well, over a period of time. The announcement to move the facility was made in August of 1972. The actual, as I under stand it, operations at the new plant commenced in July of 1973. However, the lithographic operation, as best I understand, was not transferred until February of 1974. That is part of the problem with this case.

Now, there has been a demand for recognition within the 10 (b) period. Perhaps the draftsmanship of the Complaint leaves something to be desired, but I think the events that took place from January of 1973 continuously, we will suggest, put the company on notice of the lithographers' interest in representing these employees, and further their contention that this transfer of operations from Hudson to Regency was but a transfer of unit work or relocation, as you may have it.

So, from January 19, 1973, at all material times

thereafter, there was a continuing demand. We predicate our 8 (5) charge upon a demand within the 10 (b) period.

JUDGE JANUS: Was Regency in operation in January 1973?

MR. ARCHER: Your Honor, it wasn't.

JUDGE JANUS: When did it begin operating?

MR. ARCHER: July 1973. Is that correct?

JUDGE JANUS: When did the lithographic process transfer?

MR. ARCHER: February 1974, your Honor.

The demand for recognition and to bargain made by the lithographers to the company was predicated upon information received that the lithographic process had finally commenced.

JUDGE JANUS: Would you say that again?

MR. ARCHER: What I'm saying, the demand is predicated. The latest demand by the lithographers was predicated upon information that the lithographic process, at least in part, had commenced at the Regency plant. That is the latest demand of March 4, 1974.

MR. ZUCKERMAN: I point out to your Honor that date never appears in the Complaint at all.

MR. ARCHER: The Complaint says January 19, 1973 and at all material times thereafter. We have put the Respondent on notice that we don't contend the original conduct is an independent violation.

JUDGE JANUS: Actually, could you have a violation of a

bargaining obligation at a time before the process in question was actually transferred to the Regency facility?

MR. ARCHER: There is a question in the case law concerning that. When you have a contended transfer of unit work, when does the violation arise? Because, obviously, you would have to effect some sort of transfer, and it would have an impact on both units.

JUDGE JANUS: Subject to my examination of the case law and briefing by the parties, it seems to me now as if there could be no violation in January 1973. If there is any bargaining obligation at all, it would arise at the time when the work was actually transferred there.

I'm aware, of course, there was an election in August 1973.

MR. ARCHER: September 1973.

JUDGE JANUS: The unit described there was a production and maintenance unit, with no specific exclusion for the lithographic employees.

At that time, am I right, the lithographic process was not in operation at Regency?

MR. ARCHER: That is my understanding, your Honor.

MR. ZUCKERMAN: That is correct. It was not operating at that time, your Honor.

JUDGE JANUS: I think it's fairly well clarified. I think, as it's been explained here, if there is any bargaining

obligation on the part of the Respondent, it seems to me it would have arisen when the process was transferred to the new facility.

I will so interpret the Complaint.

I don't understand Mr. Archer to be contending for anything differently, certainly not back to January 1973. I don't know.

Are you contending that there was an obligation to bargain with the lithographers at the time the Regency facility was opened in July 1973?

MR. ARCHER: What our theory is, your Honor, although there may have been an obligation to bargain, or at least sit and discuss the effect of the transfer, as we call it, a bargaining obligation, obviously the bargaining obligation becomes effective when the employees are transferred from the one facility to the other.

There's another thing that is involved in it. I told you before that the 8 (2) and 8 (5) are of themselves independent. However, there are certain issues with respect to the 8 (2), and the employer's, we'll say, role of neutrality vis-a-vis the lithographers and the field workers and the elections that transpired afterwards. Many of these facts that arose from July 1973 should affect that and should be taken into consideration; again, independently of the 8 (5).

JUDGE JANUS: When is the election as to assistance,

the 8 (a) (2) allegation, alleged to have arisen?

MR. ARCHER: That would have been, as I understand, on or about October 1, 1973.

JUDGE JANUS: Would that be after the election?

MR. ARCHER: Yes, your Honor.

JUDGE JANUS: So that the assistance application does not depend on the holding of the election?

What are the acts of assistance alleged, then?

MR. ARCHER: Actually, the most significant one is the employer entering into an agreement with the steelworkers at a time which was to incorporate later on the lithographic production employees, at a time when there were no lithographic production employees at Regency; and, further, when it was aware that there was a claim, at least, a QCR outstanding concerning the lithographers and any lithographic production work at Edison.

JUDGE JANUS: That agreement followed a certification by the Board, didn't it?

MR. ARCHER: Yes, your Honor. We will explain that.

We might as well now. May I go into an explanation now?

JUDGE JANUS: Yes.

MR. ARCHER: About August 1973, the steelworkers petitioned for a unit at the Regency Edison plant of all production and maintenance employees, including lithographers and excluding the statutory exclusions.

Pursuant to an investigation by a Board agent and discussions with the company, a stip for consent agreement was worked out between the parties, which was all hourly rate production and maintenance employees, with no reference to lithographers.

JUDGE JANUS: Were the lithographers advised of the petition?

MR. ARCHER: No, the lithographers were not advised. The Board was not aware of any interest that they might have.

We contend the employer had an affirmative duty, if he was aware of these past conversations which we will show with the lithographers, to at least advise the Board agent of at least a potential showing, a claim to this work; and notwithstanding this, the forthcoming stip agreement was entered into.

Now, the election was subsequently held. After the election, there were 8 (1) (2) and (5) charges filed by the ALA. The election was held on September 21st. Friday, September 28th, actually, they were filed. We received the 8 (1) (2) and (5) charges from the ALA allegations, which had an impact on the R Case. This was a Friday.

On Monday, October 1, not having been aware, apparently through some administrative error, the certification was issued for all hourly rate production and maintenance employees. That certification was later reviewed on the basis and the understanding and assurance that in the company at that time there

were no production and maintenance employees in that unit.

JUDGE JANUS: That there were none?

MR. ARCHER: Our information was at no material time, and what we alleged--

JUDGE JANUS: Were there any lithographic production employees within the unit?

MR. ZUCKERMAN: Your Honor, it would seem Mr. Archer is at this point making statements on the record of fact. I question whether Mr. Archer is going to put proof on after all of this fact.

JUDGE JANUS: I wanted an explanation of the General Counsel's theory of the 8 (a) (2) case.

MR. ZUCKERMAN: I think there's one additional fact Mr. Archer has forgotten to tell you. That is the date before the election, the ALA hand-delivered a letter to the Board protesting the election.

Mr. Archer is again conveniently forgetting to tell you about that.

MR. ARCHER: Mr. Archer will have a witness in support of what transpired.

JUDGE JANUS: This will all come out in testimony. Really, I suppose I'm getting indirectly a statement of positions of the General Counsel, and I'll give Mr. Zuckerman a chance and Mr. Gore, too.

MR. ARCHER: Your Honor, there's a further 8 (1) and (2)

allegation. We allege that five lithographic employees, with members of the ALA, were urged and solicited by certain officials of the Respondent in order to transfer to Edison to become members of the steelworkers' union.

JUDGE JANUS: Is that also an 8 (a) (3) allegation?

MR. ARCHER: Yes, with respect to the response for them to become steelworkers.

JUDGE JANUS: Were these people actually discharged or refused a transfer to the new facility?

MR. ARCHER: Our contention is they were refused transfers to the facility.

JUDGE JANUS: Let's get back to the 8 (a) (5) paragraph in Respondent's motion to strike.

I think I understand enough of the case now to appreciate the difficulties in it, and it seems to me, despite the allegation of January 19, 1973, the operative date for a refusal to bargain would be some date subsequent to that, the date of the filing of the petition, perhaps even March 4, 1974.

I'm not prepared to state what I think, because I really don't have any clear idea now of what it ought to be.

Mr. Zuckerman?

MR. ZUCKERMAN: May I point out, your Honor, if you have no idea what the date is, I have no idea what the date is. I don't know what I'm defending at this point.

I've got a Complaint that says one thing. I've got

Mr. Archer saying something else. Now, I've got to sit here and defend the case. I've got allegations of violations of Section 8 (a) (5) against my client. I don't know how to defend this case any more, your Honor, to be honest with you. I just don't know what the theory is. I can't take what Mr. Archer says and put it back into the Complaint. It doesn't fit.

Through your discussion with Mr. Archer, the one thing you did elicit from him is that there's a heck of a lot of explanation coming from the Board concerning this case, but I don't know what I'm defending any more.

JUDGE JANUS: I think the substitute allegations that you have to defend relate to the possible liability of the Respondent to recognize the ALA at the new facility, or at least to give them an opportunity to be heard in the petition for an election.

It seems to me that is some time in the Summer of 1973, when the production process was transferred to the new plant.

MR. ZUCKERMAN: Your Honor, of course, we contend this is not a plant relocation case. That's the Board's contention. It's no way our contention.

JUDGE JANUS: What is your contention?

MR. ZUCKERMAN: Our contention, your Honor, is that we closed the plant. That's the Hudson plant located in Jersey City. And we opened a brand new plant in the Township

of Edison, New Jersey, known as the Regency plant.

We do not concede this was a relocation, and we vehemently protest it was not a relocation.

JUDGE JANUS: How far are the two plants?

MR. ZUCKERMAN: They're about twenty-six, twenty-seven miles, your Honor.

MR. ARCHER: We'll stipulate to that.

JUDGE JANUS: How many steelworkers employed at the old plant were hired at the new plant?

MR. ZUCKERMAN: I think you've got to go back and start from the top, and the first question really is how many employees were there at Hudson. There were something like eighteen hundred employees at Hudson, and the complement of employees at the Regency plant may reach at some time two hundred and fifty.

We're not talking about a plant being moved from Jersey City to Edison Township, by no means. There's a lot more facts than that. That will be brought out, I'm sure.

MR. ARCHER: Your Honor, just by way of clarification, I'm sure it reads on the face of the Complaint, but just to clarify the matter.

We're contending the aerosol-can operation, the pressure-can operation, I think it will be referred to here, was the unit work that was relocated from the one facility to the other.

MR. GORE: Your Honor, while taking sort of a neutral position with respect to the motion, I think it should be pointed out to the Judge that the steelworkers also represent the employees at the Hudson plant in the particular unit that the General Counsel contends is a transfer; that the steelworkers have been the bargaining representative for the production and maintenance employees.

We did not at any time, at least material here, take the position this was a relocation. Although we have been certified for the production maintenance employees, we took the position, because the company took the position with us, that this was not a relocation but a new plant.

JUDGE JANUS: Off the record.

(Discussion off the record.)

JUDGE JANUS: On the record.

In our brief off-the-record discussion, it appears that much of what we've been talking about with respect to the relocation or the moving of the plant and the units that were represented either by the steelworkers or the lithographers is contained in a stipulation that has been prepared and approved by Respondent and the General Counsel. But because of the absence of the lithographers' representative at this time, we aren't able to put it into evidence.

Going back to General Counsel's motion to strike the first paragraph, I think I'm sufficiently satified in my mind

that if there's an obligation to bargain on the part of the Respondent, it would have arisen sometime in the Summer of 1973.

That brings us to the second part of Respondent's motion to strike, the fact that the original charge relating to 8 (a) (5) was dismissed by the General Counsel, and then a second charge dated March 4th was filed, and that has been incorporated in the Complaint.

MR. ARCHER: Your Honor, the former charge was withdrawn.

JUDGE JANUS: Withdrawn?

MR. ARCHER: Yes.

MR. ZUCKERMAN: That's correct, your Honor, it was withdrawn. I believe our papers so state.

JUDGE JANUS: Let's proceed to Respondent's motion to strike on the grounds that an 8 (a) (5) allegation is not justified on the basis of the second charge.

MR. ZUCKERMAN: Your Honor, in this instance, the documents we have attached to the motion indicate that a charge originally filed by the ALA alleged the date of violation back into December of 1972, December 20, 1972, your Honor. That subsequently in March of 1974, the ALA withdraws 8 (a) (5) part of that charge; from what I gather from the documents, and certainly I haven't been privy to the Board's file, simultaneously files a brand new charge.

I point out that March 4th, your Honor, is a Sunday. Everything is dated Sunday. Obviously, nothing was going to get filed until Monday morning. So, we're talking about the 5th and the 6th.

On March 6th, the Regional Director approves the withdrawal of the 8 (a) (5). Obviously, at some point earlier a request for the withdrawal had been made.

The Board then accepts this new 8 (a) (5) charge, which very explicitly alleges that from on or about March 4, 1974 a violation has occurred. That is the parameter of that charge.

I contend, your Honor, and I first preference by saying that counsel for General Counsel has misinterpreted what I have said in my motion and more or less attempts to push away this argument, but what I am contending, your Honor, is that this Board does not have a charge in its possession, a valid, live charge in its possession, upon which it can predicate the allegations in its Complaint.

Even if we take your assumptions at this time, that may-be a duty to bargain arose in the Summer of 1973, even if we accept that arguendo as correct, they still don't have a valid charge in this office at this time that allows them to predicate this Complaint on that kind of dating.

I don't know what's going on in this office, to be honest with you, but all I see is a lot of paper shuffling that has an effect upon Respondent.

Now, Respondent's rights, apparently, have no concern for this office at all. Charges are filed, charges are withdrawn, charges are filed again. They start predicating their allegations not based upon the charge that they've got before them but start predicating their charges based upon the Complaint that they allowed to be withdrawn; almost simultaneously at the time of the filing of the new one. I suggest, your Honor, that kind of hopscotching around is just playing with Respondent's rights.

On that basis, your Honor, with all of this occurring, I suggest they no longer can predicate an 8 (a) (5) allegation upon the dating going back prior to March 4, 1974. If that is not correct, then I don't know how a Respondent ever gets itself into a position of knowing what it is charged with doing, when it is being charged, when it is charged that the violation occurred, and I don't know how a Respondent ever decides how it's going to defend a case.

I suggest, your Honor, that in this instance they cannot predicate any allegations of 8 (a) (5) in this Complaint the way they have. They don't have the charge in this office on which to do it. It's my understanding that this Board doesn't solicit charges.

JUDGE JANUS: Why isn't the March 6, 1974 charge a valid charge?

MR. ZUCKERMAN: I am not suggesting it's not a valid

charge, your Honor.

What I'm suggesting is that what the Board has done in its Complaint, and in defending a case I'm governed by a complaint, they have taken a charge dated March 4th and dated into this office on March 5th. It alleges a violation occurring on March 4th of 1974.

Your Honor, I'm going to take what you have just said on face, that assuming there was a duty on behalf of Respondent to bargain with the ALA in the Summer of 1973, assuming that arguendo, this charge doesn't allege that. This charge doesn't even get close enough to it. It may have been the prior charge that was withdrawn that alleges that but not this charge. The other charge was withdrawn with the consent of the Regional Director.

JUDGE JANUS: Well, you know the theory on which the Board operates, that it's the Complaint that governs and that the charge simply gets in motion the Board's investigation.

MR. ZUCKERMAN: I agree. However, we've a history here. We've got a charge filed. We've got a long investigation that took months to investigate on that old 8 (a) (5), and then it's withdrawn. It's gone. Then all of a sudden a new charge appears simultaneously, and boom, they're right back into that old investigation again.

Where am I as a Respondent? I suggest that's just playing with the rights of the Respondent in these instances.

These charges are for a purpose. They will sustain no purpose at all if General Counsel can continue to play these games.

JUDGE JANUS: Mr. Archer?

MR. ARCHER: May I at least respond in part to what Mr. Zuckerman says.

First of all, in asserting his position, he hasn't really shown where he has been prejudiced at all. He was served with the original charges in September. He was aware of the existence of the charges. Second of all, I don't find any problem. There was a demand for recognition on March 4, 1974.

Also, if there was some question concerning the Complaint, the Respondent felt that his rights would be played with, jeopardized in any way, he had his options. He could have filed a motion for a bill of particulars.

We had a pretrial hearing. We discussed these issues at the pretrial hearing. There were no further discussions. I fail to see where his rights have been prejudiced.

JUDGE JANUS: Even on the basis of the charges, the obligation to bargain would only go back six months prior to March 4th, which would take us into September 1973, I guess.

MR. ARCHER: Right, your Honor.

May I in the way of background?

I'm not the counsel for the Charging Party, and I was not privy to a lot of the initial investigations. Part of the

problem with this case, actually what has transpired and what we allege with the transfer work from Hudson to Regency, there has been a problem of communications. You have a Charging Party who, in effect, is dealing, and we'll show, in the blind. He doesn't know exactly what has transpired in the transfer. He knows the facilities are occurring. Until last week, for example, I did not know positively when the lithographic operation had been transferred.

Our problem is that the Charging Party can't seek discovery during the investigation, and we only had a limited amount that we could investigate. Their problem, as I understand, even with the transfer of facilities from Hudson to Regency, as I understand, I'm sure there will be evidence during this investigation that there were, we'll say, hangups or problems with the transfer of work.

JUDGE JANUS: It seems to me I have to assume the legality or validity of the second charge, the March 5, 1974 charge. I don't know what's behind the withdrawal of the earlier charge by the lithographers, and I don't know that I'm even entitled to find out what it is. In any event, it seems to me the filing of the second charge with its ten-month period brings us back to September 1973, and that certainly as of that time the 8 (a) (5) allegations of the Complaint are justified.

It may be that I'm going through a lot of inquiry and

the parties are explaining a lot of things that might better be resolved in the stipulation or in the testimony.

I'm not going to make a final ruling on Repondent's motion to strike at this time; except, as I've indicated, that I think Respondent's obligation to bargain does not go back more than six months prior to the filing of the second charge.

I think, though, it's necessary to explain the circumstances prior to September 5th or 6th, 1973 in order to understand what's been going on since that time. I think much of this is covered in the stipulation of facts.

It's 12:30. Do you want to go ahead with testimony at this time, or would it be better to wait for the lithographer's representative to come? I don't know when he's due.

MR. ARCHER: Your Honor, last Friday, the Respondent caused to be served upon the Regional Director a Subpoena Ducas Tecum, for him to appear along with, we'll say in effect, all the case files, records and such concerning the RC Case that has been consolidated for hearing with the unfair labor practice charges, that being 22-RC-5853. Due to the late time on Friday in which we received the charge, the Holiday on Monday and the absence from the office of the Regional Director yesterday, we are presently preparing a petition to revoke that subpoena. I hope it will be available right after lunch hour, an actual petition with a memorandum in support.

JUDGE JANUS: What's your pleasure with respect to going

ahead now with whatever preliminary evidence you might have? I don't know who your first witness is going to be. Is he going to be someone that should not be heard until we dispose of the motion to quash the subpoena?

MR. ZUCKERMAN: I don't believe that will be the case, your Honor.

JUDGE JANUS: Let's go ahead and make a start, then.

MR. ARCHER: Would you like an opening statement?

JUDGE JANUS: Please.

MR. ARCHER: Do you feel it's necessary?

JUDGE JANUS: I have an outline of the case now. I would like some explanation of the RC Petition and the motion to clarify. Suppose for the present you limit yourself to the RC Petition.

MR. ARCHER: This is with reference to what on the RC Petition?

JUDGE JANUS: The motion to clarify and the Respondent's objections to that.

MR. ARCHER: I think we will give testimony that will bear upon our position with respect to the ULP charges.

JUDGE JANUS: Do you wish to make an opening statement? I think maybe it will be advisable.

(Opening statements by counsel for the General Counsel Respondent and Party to the Contract.)

MR. ARCHER: By way of background, to put together what

we have discussed piecemeal here, I don't think, as to at least a lot of the dates and facts and the actual facts as to what transpired, there is much dispute as to the content. Perhaps there is.

American Can operates about fifty to sixty plants in the Continental United States. The two facilities that are involved in this proceeding are its Hudson facility, which is located in Jersey City, and its Edison facility or Regency, which is located approximately twenty-six miles from the Hudson facility.

About August of 1972, I believe it was August 8, the company announced it would be closing the Jersey City plant, or the Hudson plant. At that time and all material times herein the lithographic production employees whose function it is to take plate metal or tin sheets and decorate them and print them so they are given to another production process, which are actually made into various types of cans, were represented by the Local One of Amalgamated Lithographers Union. The production and maintenance employees were represented and all material times herein were represented by the steelworkers. There were two other units, I think small units, there. They are involved in this facility.

On or about December 20, 1972, the employer, having given several communications to its employees as to the status of the closing, announced a closing date for Jersey City. I

believe it was August of 1973. This date has since been extended. In fact, the Hudson plant is still in part open. The same announcement advised the employees that the employer intended to open a new facility in Edison, and any Hudson plant employees who wished to be considered for employment at the new Edison location should apply for jobs.

Now, Amalgamated Lithographers, having received no prior notice of this closing, even until December 20, 1972, then engaged in a series of correspondence and conversations with various representatives of the company, wherein it indicated its interest in representing any lithographic employees that might be employed at the Edison facility; that basing its contention on the fact that it believed that the lithographic operation that would be put into effect at Edison would be, in fact, a transfer of certain unit work that had been done by its members at Hudson.

The employer took the position throughout that it had no duty to bargain either with respect to the closing of the Hudson plant or the opening of the Edison plant; or, further, it had no duty to bargain concerning the transfers of these employees.

Now, most of these conversations and correspondence took place throughout the first part of 1973, at least initially.

JUDGE JANUS: I may have missed something. Did

American Can give the lithographers formal notification in August of 1972 that they contemplated closing the plant?

MR. ARCHER: No, your Honor, there wasn't.

JUDGE JANUS: Did they to the steelworkers?

MR. ARCHER: I don't know, your Honor.

JUDGE JANUS: What was the form of the notification in August of 1972?

MR. ARCHER: My understanding, it was a notice, either mailed or posted on the bulletin board, from Mr. Marifjeren.

JUDGE JANUS: To the employees?

MR. ARCHER: To the employees. Public notice was given of the decision to close. There is no question about that. It wasn't a fly-by-night type of situation.

At this point, it was the understanding, and this would be in early or late Spring of 1973, that the union was aware of no lithographers having been transferred to Edison; and, in fact, as I understand, they were completely in the dark with respect to the arrangements to Edison other than some information.

JUDGE JANUS: Was there work continuing at Jersey City?

MR. ARCHER: Yes, there was. In fact, to date, there is still lithographic work transpiring in Jersey City. That's my understanding. I further understand it's due to certain production problems they have been having at Edison.

We'll say the story picks up, as you may have it, in

August of 1973, when the steelworkers petitioned for a unit of all employees including lithographic employees at the Edison facility. At that time when they petitioned I believe there were approximately sixty-five employees. At that time when a stip for consent was entered into, there were approximately ninety employees. At neither of these times, as well as the election or certification date, were there any lithographers in the unit.

The election was scheduled to be conducted on September 21, 1973. Late in the day of September 20, 1973, we received a hand delivered letter from a Mr. Allen Olmstead, who is the financial secretary and director of the Amalgamated Lithographers. This letter, in part, said they had just learned of the election, that they objected to the inclusion of lithographers in any plant-wide unit.

Now, the Board agent handling the case, upon receiving the letter, attempted to contact Mr. Olmstead, was able to; did, in fact, contact the company and was again advised that there were no lithographers within the unit.

Based on that information, the Regional Director determined to conduct the election, which was conducted. After the election, again the incident we had discussed concerning the filing of the charges and the certification.

It is our feeling that the following issues or violations have occurred with respect to the various activities of

the Respondent:

First of all, we contend by its action in entering into an agreement with the steelworkers that its lithographic employees at Edison would be included in the production and maintenance unit represented by the steelworkers, notwithstanding the fact that no lithographers were employed at that time, and further notwithstanding the fact the lithographers had claimed an interest in representing these employees at Edison, that the Respondent violated Sections 8 (1) and (2) of the Act, a mid-west piping type of theory with the subsequent cases.

We further contend the Respondent violated Section 8 (1) and (3) of the Act by applying a checkoff provision. It's part of the aforesaid agreement with the steelworkers to any lithographic employees at the Regency plant.

We further contend on or about October 12, 1973, that the employer urged and solicited certain lithographic production employees employed at the Jersey City plant who were then members of the Amalgamated Lithographers to join the steelworkers. It violated 8 (1) and (2) of the Act.

Further, by refusing to transfer these lithographic employees because they refused to join the steelworkers, and by conditions of employment by them at the Regency plant upon becoming members of the steelworkers, it violated the 8 (1) and (3) of the Act.

We further contend that as to the refusal to bargain, and we suggest if not for the above alleged unfair labor practice charges, there's a substantial inference that the lithographers would have represented a majority of the lithographic employees at the Regency plant in an appropriate unit.

One thing further manifests itself throughout this hearing, and that is the apparent, perhaps we'll use the word eagerness, maybe that's the wrong word, of the Respondent to do business in one form or another with the steelworkers to the point of denying the lithographers what we would feel would be certain rights, at least, consideration to discuss matters concerning this transfer of operations from Hudson to Regency.

JUDGE JANUS: Are you including within the 8 (a) (5) allegations an obligation on the part of the Respondent to discuss effects of the move?

MR. ARCHER: Although it is not alleged independently in the Complaint, as I read the case law, as I understand it, by implication, by actions, at least they had some duty to discuss this bargaining obligation with the Amalgamated Lithographers at the new facility.

JUDGE JANUS: I understand, Mr. Zuckerman, your position is this was not a transfer at all?

MR. ZUCKERMAN: That's correct. I also point out there's no allegation in that Complaint concerning a duty to discuss

anything at any time.

Again, what am I defending?

MR. ARCHER: You have a demand for the work. They were put on notice. Sure, we didn't allege, in effect, anytime; but by implication that there's a substantial inference should have been represented to the lithographers, but not for certain unfair labor practices or performing work that should have been done by lithographers. There's in effect--

JUDGE JANUS: How many employees were in the lithographers' unit at Hudson?

MR. ARCHER: At full operation, I believe, sixty. There are presently twenty-four.

To throw another curve ball into this proceeding, there are still twenty-four lithographers, as I understand, working at Jersey City.

JUDGE JANUS: How many employees at Edison do work which was performed in the lithographers' unit at Jersey City?

MR. ARCHER: From the stipulation, as I best understand it, at present there are thirteen. My understanding further is, I think there'll be testimony here, that they are not yet at full operation in the lithographic department.

JUDGE JANUS: Mr. Zuckerman, I presume you want to make a statement. Would you like a few minutes to collect your thoughts?

MR. ZUCKERMAN: If I may, your Honor.

JUDGE JANUS: Let's take five minutes.

(Whereupon, a short recess was taken.)

JUDGE JANUS: On the record.

I understand from an off-the-record conversation that Mr. Gore may want to say something in the nature of an opening statement.

MR. GORE: Merely to reiterate my motion originally, I think, in essence, a part of the General Counsel's theory, notwithstanding Mr. Archer's statement, is to the fact the Board is now attempting, at least, General Counsel is attempting, to dissolve a work assignment dispute by consolidating our case with the unfair labor practice case, charges against the government. I think it is quite clear that Board precedence has established the fact that an R position is not the proper vehicle for clarifying or, at least, resolving work assignment duties.

Additionally, notwithstanding Mr. Archer, as I indicated, that at all times material herein, the steelworkers have been the bargaining representatives of the production and maintainance employees at the Hudson facility. The steelworkers, were, in fact, notified by the same methods as indicated by Mr. Archer that the company intended to close its Hudson facility. A demand was made by the steelworkers for recognition at the new facility under the assumption this was, in fact, a relocation, and was informed by the company that it

was not a relocation. Subsequently, the steelworkers filed an RC petition. This petition included lithographers. The petition specifically asked for all production and maintenance employees, including lithographers.

A consequent conversation was held with the Board on September 10, 1973; at which time the petition included all production and maintenance employees, with specific exclusions. Among those individuals or classification not being specifically excluded were lithographers. It was the understanding of steelworkers that lithographers, although not employed at the new facility, would be included in the unit.

I hasten to add that the facility in question here is not the only American Can plant represented by the steelworkers. We have a number of American Can plants organized. Among those, we represent lithographers at various plants of American Can Company, I think eight in number, if I'm not mistaken.

More important to this case is that the General Counsel has alleged in its 8 (a) (2) violation against the company that there's a general allegation of unlawful assistance. Needless to say, we are still somewhat confused as to the nature of the assistance given by the company to the steelworkers; inasmuch as we filed a petition and an election was held on September the 21st, with the Board having knowledge, at least from the lithographers, of some alleged interest in

the bargaining unit.

It would appear to me, and it is our position, that if the Board made the determination, or could not make a determination, on September the 20th that lithographers had a legitimate interest in the bargaining unit petitioned for by the steelworkers, that between September 21st, the date of the election, and October 1, 1973, the date on which the steelworkers were certified, the Board had ample time, or at least the Regional Office had ample time, to consider any interest the lithographers may have had in this particular unit prior to its certification. The date upon which, October 1, 1973, the steelworkers were certified as the representative, it would appear to us that the Company had an obligation at that time to bargain with the steelworkers for all production and maintenance employees employed at that time and any subsequent employees employed, except those, of course, excluded by the petition itself.

The General Counsel's theory, as I understand it, is that on March 4, 1974 the lithographers were employed at the facility. It would appear also to us that our petition filed in September of 1973 covered any lithographers that may have been employed on that date or on any future date.

I think the major problem that we have, even after reading the Complaint, is trying to determine why, first of all, we should even be here; secondly, to try to understand the

General Counsel's theory with respect to the unlawful assistance. Because even after Mr. Archer's statement, I'm still not clear as to how we were unlawfully assisted by the company, inasmuch as the allegation raised by General Counsel occurred after we were certified by the Board.

JUDGE JANUS: Let me ask Mr. Archer this: Is there anything in the Complaint, or do you intend to make any contention that the allegation should be set aside because an unrepresented group was employed at the time of the election? Is it too small a group?

Mr. Archer: No. Our contention, very simply stated, is that the employer resolved a QCR which was in our province to resolve; that the employer was aware of an interest that the lithographers might have in representing any lithographic production employees within or at the Edison facility. And notwithstanding awareness of this issue, it went ahead and agreed to the inclusion of lithographers; first off agreed to an inclusion within a consent agreement without advising the Board; second of all, agreed to include them in a collective bargaining unit.

JUDGE JANUS: I don't think we ought to try to resolve all the factual issues in the opening statements, but I do want to ask Mr. Gore to explain one thing.

You mentioned that you thought this was a work assignment dispute. Would you expand on that?

MR. GORE: Absolutely. It appears the General Counsel's theory, at least in some approaches, at least trying to understand this Complaint, what the General Counsel is, in fact, saying now is that even after the steelworkers were certified on October 1, 1973; that on March 4, 1974, the employer has employed actively some lithographers.

It would appear what General Counsel is saying, in effect, is these lithographers should be, at least by consolidating this R Case with the unfair labor practice charges, deemed by the Board to be outside the bargaining unit.

Now, I was not of the opinion, at least I wasn't sure, as to whether the General Counsel's theory was that there should be a new election conducted. Upon considering the Complaint, I came to the conclusion that the Regional Director was not seeking a new election but was seeking to clarify the certification issued by him on October 1, 1973.

If this is what the Regional Director was doing, then it is my contention the R Case proceeding is not the vehicle for clarifying the bargaining unit. A unit clarification might be, but not through an RC.

JUDGE JANUS: Putting that aside for the moment, you're not contending that there was any charge in the work performed in the Hudson unit by the lithographers in the new facility, are you? Am I making myself clear?

Are you saying that there's a change in jobs, and that

the work previously performed by the lithographers at Jersey City is now being performed at Edison?

MR. GORE: It is my understanding that the work being performed at the new facility is not identical. Therefore, it would then follow that my contention, assuming you would find this was a relocation, that this is not the identical work between the two operations.

JUDGE JANUS: I don't want to go into that now, Mr. Archer.

I think I'll ask Mr. Zuckerman to make his position on the record.

MR. ZUCKERMAN: Your Honor, I'm sorry to belabor the point, and I guess I'll be saying this a lot until something happens to change my thinking, but I find myself confronted with a Complaint that goes ten pages long, which I find to be a hodgepodge of statements which are either factual or not factual or which are contentions or assumptions. But in no way can I put this all together to come up with a simple theory which the Board can clearly state to me.

I suggest that my role in defending a case is that I must look at a Complaint and decide what I'm supposed to defend, based on that Complaint. Yet here today, I've been told inside of two hours that well, maybe my violation is not January 19th. Maybe my violation is somewhere in the Summer of '73. Then ultimately, maybe it's September of '73. Then

I get told maybe also there's a violation running around here some place that I had some kind of duty to talk to the ALA about something or another back in 1972.

Well, I don't know what I'm defending anymore. And to apologize to the Court Reporter, I find this to be most cockamamie case that I have ever run across. I find myself in a case in which the Board today has admitted procedural foul ups. I find myself in a case in which the Board can't decide upon its own theory.

Here I am, and I don't know what I'm defending. All I know is that I opened up a brand new plant. I do know I staffed my plant, that the steelworkers came along and petitioned, that I walked into the Board Office and we agreed upon a stipulation for consental action. I know at that point I had a minimum number of job classifications I needed, and I know I had the minimum number of employees that I needed to fulfill the regulations of this Board for conducting an election in a brand new plant.

The election is conducted, in spite of a letter coming in from the ALA the day before saying: Hold it, fellows. Something's wrong here.

The Regional Director had an option. It could have continued the election, and it could have impounded the ballots. No, the election marches on.

The ALA files a charge a few days late, 8 (a) (1), (2)

and (5). The Regional Office has got a letter preceding the election. It's got the charge. It goes on its merry way and issues a certification.

Now, I've got an 8 (a) (5) to bargain, a duty to bargain with the steelworkers. So, I'm sitting with a certification. I've got to go bargain. Then I'm told I can't decree any job classifications to my unit, that I've just been certified on a production and maintenance unit.

You know, three little sheepskins hanging on the wall, and I just can't understand that theory at all. I don't understand the purpose of the Board's regulation on minimum number of job classifications, in minimum number of employees in a new plant situation, if I can't decree to that unit the job classifications that were vacant at the time of the election. This the Board ignores. This the Board doesn't even want to talk about. Nowhere has Mr. Archer bothered to say anything about that.

The so-called factual statement Mr. Archer made has got some holes in it. There are things Mr. Archer hasn't bothered to disclose concerning those facts. Those facts we will bring out during the trial. I think we're getting rather confusing now and trying to lay out all these facts in these opening statements.

Your Honor, we will show, if we need to show, and I honestly believe that the General Counsel is no way going to

meet a burden of proof on this case on its direct, but if we are forced into it, we will show that this was not a plant relocation. This is a brand new plant that opened up.

Just to get the tenure of this right, there were nine plants announced that were being closed at the same time. This wasn't an isolated situation. American Can, when it announced the closing of Hudson, announced the closing of eight other facilities.

We will show this was not a plant relocation. This is a brand new plant. The only reason why we're here today is because the Board somehow feels that it has procedurally fouled up this case.

Now, I can't even figure out any more what remedy it's seeking for its own foul ups. I still would like to know somewhere along the line what I'm defending. And if there are any more statements made by General Counsel during the course of this trial that I've got possibly another 8 (a) (5) violation to defend against that's not in this Complaint, obviously, I'm going to get even more upset.

Unless your Honor has specific questions of me, I'd like to rest at this point and let General Counsel march on.

JUDGE JANUS: It's after 1:00 o'clock. I think we're all ready for a break. Let's meet at 2:15.

MR. ARCHER: Let's try 2:30. We may have counsel for the Charging Party here.

JUDGE JANUS: Let's come back at 2:15, and see if we can't go on with something, despite the absence of the lithographers' counsel.

(Whereupon, at 1:10 p. m., the hearing was recessed, to reconvene at 2:15 p. m. the same day.)

AFTERNOON SESSION

2:15 p. m.

JUDGE JANUS: On the record.

For the purposes of clarification, the two plants are known as the Hudson plant, which is located in Jersey City, which is the old plant. The new plant is to be referred to as the Regency plant. That's the one sometimes referred to in the Complaint as the Edison plant.

Are you ready for your first witness?

MR. ARCHER: Yes, your Honor. I call Edward Hansen, please.

Whereupon,

EDWARD HANSEN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

MR. ARCHER: Before we start, do you have to have two representatives here?

MR. ZUCKERMAN: Yes, I do.

MR. ARCHER: Do you find that necessary? It could get a little unwieldy.

MR. ZUCKERMAN: If it does, holler.

DIRECT EXAMINATION

Q (By Mr. Archer) Mr. Hansen, would you state your full name and address for the record?

A Edward Hansen. My home address or the plant address?
Q Home address.
A 349 Foxwood Road, Union, New Jersey.
Q Mr. Hansen, by whom are you employed?
A Local One, ALA.
Q ALA being the Amalgamated Lithographers?
A Correct.
Q In what capacity are you employed by the ALA?
A Executive vice-president.
Q How long have you been employed in that capacity?
A Since 1948.
Q What type of employees does the Amalgamated Lithographers of America represent?
A Lithographic production employees.
Q Does the Amalgamated Lithographers represent any employees at any plants in the American Can Company?
A Yes. We represent the employees at three of the American Can plants; American Can Hoboken, American Can Hillside, and American Can Hudson.
Q All three of those plants are located in New Jersey?
A That's correct.
Q How long have you represented the lithographic production employees at the Jersey City plant?
A My recollection goes back to about 1944.
Q Do you recall how long you've represented the litho-

graphic production employees at the Hillside plant?

A Twenty years.

Q What about Hoboken?

A I would say at least the same amount of time.

Q As part of your function as executive vice-president of the Amalgamated Lithographers, do you negotiate collective bargaining agreements with them?

A Yes, I do.

Q With respect to American Can, have you ever participated in any collective bargaining negotiations with them?

A Yes, since 1948.

Q With respect to American Can's Jersey City plant, what, if any, notification did you receive that that plant was closing?

MR. ZUCKERMAN: I object, your Honor. Outside the scope of the Complaint.

JUDGE JANUS: I believe it's preliminary.

MR. ARCHER: It's not intended to be anything more than preliminary.

A (Continuing) From management we received no notice. Our delegate Angelo Campione notified in the latter part of December of 1972 that a notice had been posted that the Hudson plant would be closing down, and that any of the employees interested in going to a plant which was being established in Edison, New Jersey, would have the right to fill out applicant

forms.

Q After this conversation with Mr. Campione, what, if any, conversations did you have with the company?

A Actually, prior to that, before talking to the company, I talked to Angelo and asked him how our people felt about the plant closing and whether they were interested in going to the Edison plant. He told me that most of the people that he talked to signified they would be interested in obtaining employment at the Edison plant.

JUDGE JANUS: Excuse me. I may have missed this. Who is Angelo?

THE WITNESS: He's our shop steward at Hudson.

A (Continuing) On the 16th of January, I called Bill Lesser, the industrial relations representative, American Can, and inquired as to what was transpiring at Hudson and mentioned the fact we were concerned about our people losing their positions there and whether the company was considering having our contract carried over to the Edison plant. He told me that the company considered the Edison plant a new plant, and as far as they were concerned they would like to see it unorganized; but if it had to be organized, then they would prefer to have a wall-to-wall unit.

Q Following that conversation with Mr. Lesser, did you have occasion to have any further correspondence or conversations with any officials of the company?

A Before I corresponded with any of the other officials, I again talked to Angelo Campione and mentioned the fact to him I was going to send him a petition indicating that the employees were interested in going to the Edison plant, and he should have those employees interested, in the lithographic unit, in going to Edison sign it and send us a copy and turn a copy over to the management at Hudson, which I understood he did.

On the 19th of January, I wrote to the manager of the Hudson plant, Marifjeren, and indicated to him that our members were interested in going to the Edison plant, and we felt the company should discuss this problem with us inasmuch as we were interested in representing our members at Edison in the lithographic unit.

MR. ARCHER: At this time, I'd like to mark for identification General Counsel Exhibit 3.

(The document above-referred to was marked General Counsel's Exhibit No. 3 for Identification.)

MR. ZUCKERMAN: May I ask the Reporter to read back Mr. Hansen's answer, starting from about the time he indicated that he wrote to the manager of the plant, Mr. Marifjeren.

(Whereupon, the referred-to answer was read by the Reporter.)

Q (By Mr. Archer) At this point, I show you,

Mr. Hansen, General Counsel Exhibit No. 3 for identification, and ask you if you can identify that?

A That is the letter I spoke about.

Q When is the letter dated?

A It's dated January 19, 1973.

I might say we also stated in that letter that we were kind of taken back by the fact that the company hadn't saw fit to discuss the closing of the plant, and the faith of our members in the plant, inasmuch as we've had a long relationship with American Can Company; I might say a good relationship in all the years that we've negotiated contracts with them. We never found it necessary to go to an arbitration. If there were any grievances, we always settled them on a mutual basis.

To have this kind of thing happen while we had a contract in effect in the plant kind of disturbed us, to say the least.

MR. ZUCKERMAN: Objection, your Honor, totally gratuitous remarks unsolicited by the General Counsel. There's no question.

JUDGE JANUS: I'll ignore the remarks.

MR. ARCHER: At this time, we move General Counsel Exhibit 3 into evidence.

MR. ZUCKERMAN: I'm afraid I have to object, your Honor, to its admission. My contention must continue to be

that inasmuch as the Complaint, Paragraph 27 of the Complaint, charges American Can with refusal to bargain as of January 19, 1973, I must take the position, your Honor, it's outside the 10 (b) period. Therefore, this letter is not admissible.

JUDGE JANUS: I'll admit it as background to the allegations of the Complaint.

(The document heretofore marked General Counsel's Exhibit No. 3 was received in Evidence.)

Q (By Mr. Archer) Mr. Hansen, following this letter of January 19th to Mr. Marifjeren, what, if any, correspondence did you receive from the company?

A We received on the 30th of January a letter from Lester Cooper, an attorney for the American Can Company, stating that our letter of the 19th had been turned over to him by Manager Marifjeren. He stated that it was his opinion that the company didn't have any obligation to discuss with us the phasing out of the Hudson plant, nor did they have any obligation to recognize us, nor would our contract at Hudson cover us in the new plant at Edison.

MR. ARCHER: May I have this marked for identification?

(The document above-referred to was marked General Counsel's Exhibit No. 4 for Identification.)

Q (By Mr. Archer) Mr. Hansen, I show you General Counsel's Exhibit 4 marked for identification. Can you describe that?

A Yes. This is the letter that Lester Cooper wrote to us on January the 30th, answering our letter of January 19th.

Q You received this letter?

A Yes.

MR. ARCHER: I move General Counsel 4 into evidence.

MR. ZUCKERMAN: Your Honor, I must move on the same objection.

JUDGE JANUS: Mr. Gore?

MR. GORE: I would object, of course, being outside the 10 (b) period.

JUDGE JANUS: I'll receive General Counsel's Exhibit 4 over Respondent's and Steelworkers' objection.

(The document heretofore marked General Counsel's Exhibit No. 4 was received in Evidence.)

Q (By Mr. Archer) With respect to the letter that was sent to you on January 30, 1973, by Mr. Cooper, what, if any, response did you make to that letter, Mr. Hansen?

A On March 7, 1973, we wrote to Lester Cooper and told him we felt the company's position was a violation of our current agreement at that time, inasmuch as our employees were drastically affected, and that unless there was a complete

change in the method of lithographing on metal, we felt the company was obligated to take our members from Hudson and transfer them to the plant at Edison, and that we should have the right to represent them.

Q Let me just paraphrase what you're saying.

Was it your position that this new Edison-Regency plant would be a lithographic-type operation or contain a lithographic operation?

A Yes. Well, from the information we had received, particularly in talking to our delegate Angelo Campione, we felt, actually, this was another can lithographic operation. As far as we could see, there were no special lithographic skills to be used in the new plant, nor any special lithographic equipment that was going to be used in the plant.

MR. ARCHER: At this time I'd like this to be marked General Counsel Exhibit 5.

(The document above-referred to was marked General Counsel's Exhibit No. 5 for Identification.)

Q (By Mr. Archer) Mr. Hansen, I show you General Counsel Exhibit 5 marked for identifcation, and ask you if you recognize it?

A Yes.

Q Is that a copy of the letter you sent on March 7?

A That is a copy of the letter we sent to Lester Cooper

on March 7, 1973.

MR. ARCHER: At this time I move General Counsel 5 into evidence.

JUDGE JANUS: I presume you object for the same reasons you did on Numbers 3 and 4?

MR. ZUCKERMAN: Yes, your Honor.

MR. GORE: The same objection.

JUDGE JANUS: I'll receive the Exhibit over the objections.

I think we can assume if you have any more such correspondence that Mr. Zuckerman and Mr. Gore are going to object, and I'm going to overrule it.

(The document hertofore marked General Counsel's Exhibit No.5 was received in Evidence.)

Q (By Mr. Archer) What, if any, response did you receive, Mr. Hansen, to your letter of March 7, 1973?

A On March 9, 1973, we received an answer from Lester Cooper, stating that the company does not agree that it's necessary for them to discuss the closing of the Hudson plant, nor bargaining in any way for the Edison plant.

However, he stated that the company will negotiate a new contract covering the Hudson plant and the Hoboken and Hillside plant. He further stated they would choose employees for the lithographic unit at Edison on a non-discriminatory basis.

MR. ARCHER: I'd like marked for identification General Counsel's Exhibit No. 6, letter dated March 9, 1973.

(The document above-referred to was marked General Counsel's Exhibit No. 6 for Identification.)

MR. ARCHER: The parties have stipulated that Mr. Cooper was house counsel for American Can Company and is their agent of Respondent.

Q (By Mr. Archer) Mr. Hansen, I show you General Counsel Exhibit 6 marked for identification, and ask if you can describe that?

A This is a letter dated March 9, 1973. It is the answer to our previous letter. This letter is signed by Lester Cooper.

Q Who is the letter addressed to?

A It is addressed to Edward Hansen, executive vice-president, of Local One, Amalgamated Lithographers of America, 113 University Place, New York, New York.

MR. ARCHER: I move General Counsel Exhibit 6 into evidence.

JUDGE JANUS: I'll receive General Counsel's 6 over Respondent's continuing objection.

(The document heretofore marked General Counsel's Exhibit No. 6 was received in Evidence.)

Q (By Mr. Archer) Mr. Hansen, I note from your

prior testimony that there was some mention of collective bargaining negotiations. Did you, in fact, shortly thereafter become involved in collective bargaining negotiations?

A Yes, we did. On April the 11th, 1973, we met with Bill Lesser of the American Can Company and reached and signed an agreement covering the American Can plants in Hoboken, Hudson and Hillside, New Jersey. At the conclusion of those negotiations, I asked Bill Lesser if he could arrange a meeting with John Bully, who heads up the industrial relations, I would say, on the Atlantic Coast, so that we could meet him and talk to him about the American Can Hudson plant.

MR. ARCHER: At this time I'd like marked, and we probably can stipulate to these, Respondent has some over there, copies of the contract.

JUDGE JANUS: Any problem with this?

MR. ZUCKERMAN: No.

MR. ARCHER: I'd like to introduce as General Counsel's Exhibit No. 7, and we can compare them, copies of the collective bargaining agreements with American Can and Amalgamated Lithographers, covering the three aforementioned plants.

MR. ZUCKERMAN: No objection, your Honor.

JUDGE JANUS: I will receive General Counsel 7.

(The document above-referred to was marked General Counsel's Exhibit No. 7 and received in Evidence.)

JUDGE JANUS: May I clarify something here? Previous agreements between your union and American Can with respect to these three plants, Hudson, Hoboken and Hillside, did you have single contracts previously?

THE WITNESS: Yes, I would say maybe going back about twelve, fifteen years ago we did. We used to go from plant to plant. In one negotiation, we had requested that we would have one contract covering the three plants, which the company agreed to.

Q (By Mr. Archer) Mr. Hansen, during the negotiation of the collective bargaining agreement, which has been introduced in evidence as General Counsel No. 7, how many negotiating sessions did you have with American Can?

A On the contract we just spoke about?

Q Yes.

A We had two sessions.

Q At any time during those two sessions, was there any discussion of the Regency plant?

A No.

Q Why not?

MR. ZUCKERMAN: Objection, your Honor. The fact is there was not.

JUDGE JANUS: I'll sustain the objection.

Q (By Mr. Archer) You testified that a subsequent meeting was arranged on May 4, 1973, with Mr. Bully and a

Mr. Lesser?

A May 14, 1973. I had previously asked Bill Lesser to set up an appointment, which he did. I met with Bill Lesser and John Bully. During the meeting, I asked John Bully whether the company had changed their position on the closing of the Hudson plant and the employing of the people from Hudson in the lithographic unit at Edison, and our representing them. He stated that the company's position hadn't changed, that they still felt that the new plant was, in fact, a new plant, and that they would like to see it run unorganized; but if it was to be organized, they would prefer to have it under a one-unit bargaining group and under one union.

So, actually, at that meeting we didn't make any headway. We left the question open.

Q You say this last meeting occurred on May 14, 1973?

A That's correct.

Q What, if any, further correspondence did you have, or conversations did you have, with the company about this Regency plant?

A What had transpired here was that we weren't getting very much information out of what was happening. So, back in January, we had assigned Allen Olmstead, our representative, to be in contact with Angelo Campione, the shop delegate at Hudson, and to alert our attorneys as to what was happening so that if any action should be taken they would take the

proper action. But the information we seemed to be getting constantly was that the lithographic operation was not running down at Edison, and that none of our people were employed at the Edison plant, and that as late as that March 14th date, even later, there wasn't any indication that lithographers were employed in the plant.

Q Just to clarify, you mean May 14th?

A May 14, 1973.

On March 4, 1974, I received a copy of a letter that Jim Gill, our attorney, sent to the Edison plant of American Can, telling them that four lithographers, and naming the people, were employed in the lithographic operation of the Edison plant, and that we requested to be recognized as the bargaining agent for these lithographers.

JUDGE JANUS: That's March 4, 1974?

THE WITNESS: '74, yes.

MR. ARCHER: I would offer General Counsel Exhibit No.8, a copy of that March 4, 1974 letter.

JUDGE JANUS: There's no objection to it?

MR. ZUCKERMAN: No objection.

JUDGE JANUS: It's received.

(The document above-referred to was marked General Counsel's Exhibit No. 8 and received in Evidence.)

Q (BY Mr. Archer.) Mr. Hansen, since March 4, 1974, what, if any, conversations have you had with the company

concerning the Regency facility?

A I haven't had any conversations with them.

MR. ARCHER: I have no further questions.

JUDGE JANUS: Before Mr. Zuckerman begins, what, if anything, happened between May 1973 and March 4, 1974 with respect to inquiries by your organization as to the situation at Regency?

THE WITNESS: As I stated before, we had turned the matter over to Allen Olmstead, who was in touch with Angelo Campione, to obtain any information that he could. Actually, it was difficult getting any information, but the information we received was that actually the operation at Edison and the lithographic end did not commence. That was the sum total of our information. I believe Allen Olmstead could probably add more to that.

CROSS-EXAMINATION

Q (By Mr. Zuckerman) Mr. Hansen, I show you a copy of General Counsel's Exhibit No. 3, letter dated January 19th.

When you testified concerning that letter, you said in the letter you suggested to the company that they talk to the union about employees going over to Regency. I'd like you to pick out the words for me in the letter that say that?

A Well--

Q No. Please pick out the words in the letter that say that.

A Actually, what the letter did say is that we are taking--

Q Please answer my question.

A The specific words?

Q If there are no specific words, please tell me.

A I didn't read the letter verbatim.

Q The letter does not say that, does it, Mr. Hansen?

A I didn't read the letter verbatim.

Q I'm not asking you that, Mr. Hansen. Does the letter suggest--

A I was giving an oral recitation of my impression of what the letter stated. The letter is in the record, and what it states, it states.

Q I know it's in the record, Mr. Hansen. I am asking you to tell me whether that letter states by its terms--

A I'll read the letter to you.

Q Mr. Hansen--

JUDGE JANUS: If it doesn't, as Mr. Hansen says, it's in the record.

THE WITNESS: A copy of this is in the record. He knows as well as I do what it says.

Q (By Mr. Zuckerman) I show you General Counsel's Exhibit No. 4, a letter dated January 30th.

You were testifying about that letter, Mr. Hansen. You said you received the letter from Mr. Cooper, in which

Mr. Cooper said that the company had no obligation to discuss with the union, namely, the ALA, or had any obligation to discuss the phase-out of Hudson.

Now, would you please tell me where in the letter that letter says that?

A It says phase-out of Hudson.

Q Where?

A I don't see that here.

Q The letter does not say that, does it?

A Specifically--

Q Yes or no?

A Specifically it doesn't say that, no. The words to that effect are not in there.

Q Thank you.

A I wasn't reading--

Q Thank you.

MR. ARCHER: Let him finish.

A I wasn't reading the letter. I was giving you my impression of what was in the letter.

JUDGE JANUS: I think it's clear. In any event, I'll read the letters for myself and see what the effect of the letters are.

Q (By Mr. Zuckerman) Mr. Hansen, you testified with respect to the collective bargaining negotiations on or about April 11th, that there were no discussions concerning the

Regency plant. Is that correct?

A Yes.

Q Is it correct, Mr. Hansen, that in those negotiations you made no demands to the company with respect to the Regency plant or employees of Hudson who might desire to go to Regency. Is that correct? You made no demand?

A Do you want me to answer?

Q Yes.

A Yes. We did not raise the question of the moving of the plant in negotiations because--

Q Thank you, sir. I'm not asking you why. I'm asking you whether you did or didn't

THE WITNESS: Don't I get an opportunity to complete my statement?

JUDGE JANUS: Mr. Archer can raise it in redirect.

MR. ZUCKERMAN: No further questions, your Honor.

JUDGE JANUS: Mr. Gore, do you have any questions?

MR. GORE: No questions.

REDIRECT EXAMINATION

Q (By Mr. Archer) Mr. Hansen, why didn't you make a demand during this collective bargaining negotiation?

A Our attorneys felt that, actually, we covered the people in the Hudson plant. And we had on two occasions written to the company and stated our position. During that period, the lithographic operation at Edison still had not gone into effect.

So that it was the feeling of our attorneys if something developed, why we could once more contact the company; as the two plants had been under surveillance, as I previously stated.

Q I think you testified previously, but refresh my memory. How many times did you meet with co-representatives during these negotiations?

A Twice.

Q On what dates?

A I don't have the first date, but I have the date we signed the contract. That was April the 11th, 1973.

Q If I recall your testimony, was it at the end of the April 11th meeting that you requested a meeting with the company officials?

A After the meeting had broken up, I asked Bill Lesser. I hadn't met Bill Lesser: or, if I had, it was many years since I met him. I believe we might have met once at Hillside, when he was over at Hillside.

So, I felt it would be a good idea for us to meet and chat a little bit. So, I asked Bill, and he was kind enough to make that meeting.

Q It was during that subsequent conversation that the issue of Regency was again discussed?

A Yes. I again inquired into that.

MR. ARCHER: No further questions.

MR. ZUCKERMAN: No questions.

JUDGE JANUS: Thank you very much.

We'll take a five-minute recess.

(Whereupon, a short recess was taken.)

JUDGE JANUS: On the record.

Your next witness.

MR. ARCHER: Your Honor, I'm calling a witness out of turn. He has to go to work.

Mr. Grupe.

Whereupon,

GEORGE GRUPE

was called as a witness by and on behalf of the General Counsel, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Archer) Would you state your full name and address for the record, please?

A George Grupe, 473 Franklin Avenue, Hasbrouck Heights, New Jersey.

Q Mr. Grupe, by whom are you employed?

A American Can, Hudson plant.

Q In what capacity?

A Litho pressman.

Q Litho pressman?

A Right.

Q How long have you been employed there?

A Approximately twelve years.
Q What, if any, union are you a member of?
A Amalgamated Lithographers, Local One.
Q How long have you been a member of that union?
A Twenty-nine years, approximately.
Q Exactly what do you do as a litho pressman?
A I decorate the flat, tin plate with a lithographic press through rollers, pressures, inks and water, and reproduce an image from a printing plate on to tin plate.
Q You say you decorate this plate metal or tin sheet with a press. Is that what you would consider a standard lithographic press?
A Right.
Q What type of press is that?
A Coater , I believe. It's a lithographic press.
Q Is it two color, four color?
A Two color, the one I'm running at the present time.
Q Is there a standard crew on each press?
A Standard litho crew of two men.
Q Who would they be?
A Pressman and operator.
Q To the best of your knowledge, how many lithographers are presently employed at Jersey City?
A Now?
Q Yes.

A Four crews; twenty-four, twenty-five litho ALA men.

Q By litho, you mean pressmen?

A ALA men.

Q And operators?

A Operators, and one plate maker.

Q Other than performing your job as a pressman, do you perform any other functions at all?

A No. I just run the press.

Q At Jersey City, at the Hudson plant, is all the lithographic equipment presently in one place?

A It's on one floor, but it's in different departments.

Q What floor is that?

A The 7th floor.

Q Other than the lithographic processes, as you may have them, is there any other process on the 7th floor?

A In Department 75, there's two coaters.

MR. ZUCKERMAN: Could we clarify what time period is being testified to?

MR. ARCHER: The present.

Q (By Mr. Archer) Has there been any change, say, in the last nine months in that--

A Oh, yes. There's been presses taken out, coaters taken out. The plant is practically empty except for the 7th floor.

Q Has the lithographic department always been on the 7th floor?

A Since I've been there, yes.

Q Fourteen years?

A Twelve years.

Q Is there a lithographic foreman on your shift?

A Yes. Each shift has its foreman.

Q Who is your foreman?

A We have a gentleman right now from-- Lorne Taylor is his name.

Q In order to be a pressman, what, if any, training were you required to have?

A I spent several years as a floor boy and four and a half years as an apprentice-operator and four and a half years as an apprentice-pressman.

Q Did you serve your apprenticeship as part of a set program?

A Yes, union program.

Q Mr. Grupe, did you have on occasion, on or about October 12, 1973 to have a conversation with Larry Marifjeren?

A Yes.

Q Do you remember who Larry Marifjeren is?

A Yes, I do.

Q Who is he?

A At that time he was Hudson's plant manager.

Q Can you describe that conversation?

A I was told to hang around one morning. I work the

third shift. I was told to hang around in the morning, as Mr. Marifjeren wanted to see me upstairs.

Q Who were you told by?

A My supervisor-foreman at that time, Charlie Demburger.

Q Charlie Demburger?

A Yes.

Q Is he still your supervisor?

A No, he's not there anymore.

Q Do you know where he is?

A He's in Regency.

Q You were called up, and what happened?

A I was called up. Mr. Marifjeren explained to me they were giving me the opportunity to go down to the new plant. He explained that the plant would be wall-to-wall steelworkers. Those were his words. With that, he asked Mr. Reese to explain the contract of the steelworkers to me.

Q Just in the way of background, who was present, where did the conversation take place?

A In an office. I believe it was Mr. Muller's office, who was an assistant manager, I believe, at that time.

Q Mr. Marifjeren was there?

A Mr. Marifjeren and Mr. Reese.

Q How did you know it was Mr. Reese?

A I recognized him.

Q You say you recognized him. What do you mean?

A I recognized him as being Mr. Reese. I was also told that Mr. Reese was in there with Mr. Marifjeren.

Q Do you know what Mr. Reese's job was?

A Personnel manager.

Q You were told that the Edison, or Regency, facility was wall-to-wall steelworkers?

A That's what Mr. Marifjeren said. It would be wall-to-wall steelworkers.

Mr. Reese explained the steel contract at that time for lithographers, which was $6.40 an hour, I believe, compared to our approximately $9.00 an hour.

Q Did he say you were going to be making this, or was he just speaking in general terms?

A He was quoting the steelworkers contract.

Q For any specific job classification?

A For lithographing.

Q What, if any, other conversation did you have?

A He told me the vacation period of three weeks; the hours, forty-hour week. That's about all I can recall.

Q What about seniority? Would you retain any seniority?

A He did say my twelve years would go toward pension but not toward seniority in the plant.

Q Were you actually offered a job at Regency?

A If I wanted to get out of the Local One I suppose I could have had the job, yes.

Q Did they actually offer you a job?
A Well, they offered me the opportunity.
Q What do you mean by that?
A I was given the opportunity of going down to Regency as a steelworker.
Q In what job?
A As a lithographic pressman.
Q At the time of this conversation, you made some reference to pension. Was there any discussion at all concerning your pension?
A Mr. Reese said my twelve years with the company would go towards pension in the steelworkers but would not go towards seniority.
Q At that time, you were covered by what type of pension?
A I'm covered with the ALA pension plan. At that time I had twenty-eight years in Local One.
Q Was there any offer made to transfer that twenty-eight years of credit?
A No.
Q Did you accept a job as a pressman in Regency?
A No, I didn't. I told Mr. Marifjeren I would have to think it over. It was too big a step to break away from Local One. It would take a lot of thought. I told him within a day or two I would let him know my decision.
Q Did you, in fact, advise him in a day or so?

A I did not advise him personally. I advised a gentleman in personnel. I believe his name was Kennedy.

Q What did you say to him, and what did he say to you?

A I told him I couldn't accept unless it was under the ALA jurisdiction.

Q What did he say?

A He just nodded his head yes, and that's it.

Q Was anybody else present with you when you had this conversation with Mr. Kennedy?

A Two other pressmen and an operator.

Q Do you recall the approximate date of that discussion?

A I believe I saw Mr. Marifjeren on Friday. I believe it was Tuesday morning after coming off shift. It would be 8:00 o'clock; something like that.

Q You testified they offered you a job at $6.40 an hour?

A Yes, that was the deal. That was the rate.

Q What was your hourly rate of pay under the ALA contract?

MR. ZUCKERMAN: Objection, your Honor, no relevancy.

JUDGE JANUS: I think he's already answered it anyway indirectly.

What's the basis of your objection?

MR. ZUCKERMAN: I don't see the relevancy, your Honor, at all.

JUDGE JANUS: I'll overrule the objection.

Q (By Mr. Archer) Do you recall your rate of pay?

A Approximately $9.00 an hour.

Q I don't recall whether you testified to this previously. What is your work hour at Hudson?

A Thirty-two and a half hours at present.

Q Did they offer you a thirty-two-hour work week?

A No, it was a forty-hour week, steelworkers.

Q In effect, in order to take this job, you would be taking a $3.00 cut in salary, working greater hours?

A Right.

Q Losing pension benefits?

A Right.

Q You still work at American?

A Right, I'm still working there.

Q At Hudson?

A At Hudson.

Q What are you doing?

A Running the press, same two color as when I went up to see Mr. Marifjeren.

Q You say the same two color press, and you're still decorating cans. Are these cans being put together at the Hudson plant?

A No, there's no facilities to make cans at Hudson.

Q If they're not being put together at the Hudson plant, what happens after you decorate the cans?

A They're strapped up and they're sent to Regency.

Q How do you know that?

A There's written on the sides of each load: To be sent to Regency.

Q Is there any other form of identification on them at all?

A Each label has plant number 060 on the label, which is Regency.

Q After your conversation with Mr. Kennedy, had you had any further conversations with a company official concerning the job?

A No.

Q You say you decorate flat metal sheets, which are going to Regency. Do you decorate sheets that go to any other plant of American Can Company to the best of your knowledge?

A I haven't recently, no.

Q When is the last time you did it?

A A couple of months ago, I would say offhand.

Q What shift do you work on?

A Third shift, from 12:30 at night to 7:30 in the morning.

JUDGE JANUS: I think you said there were about twenty-five employees. Is that all three shifts?

THE WITNESS: All three shifts, right. That's litho only.

MR. ARCHER: I have no further questions.

JUDGE JANUS: Has the number of lithographic production

employees been reduced at Hudson over the last year?

THE WITNESS: Yes. There were sixty originally.

JUDGE JANUS: About how long ago?

THE WITNESS: Four or five months ago.

JUDGE JANUS: Do you know where those employees have gone?

THE WITNESS: I would say most of them are unemployed.

MR. ARCHER: May I ask one more question?

JUDGE JANUS: Yes.

Q (By Mr. Archer) Do you know whether any of the pressmen or assistant pressmen, operators, I think you called them, have been transferred from Hudson to Regency?

A No, there's no transfer.

Q None of the ALA members at all?

A No.

Q Before your present foreman, who was your foreman?

A Before our present one was Charlie Demburger, who is now down in Regency. As I understand, he's in Regency.

Q What type of cans are you decorating now?

A Mostly pressure cans.

Q Aerosol cans?

A Aerosol cans.

MR. ZUCKERMAN: Mr. Archer, did Mr. Grupe give a prior affidavit to the Board?

MR. ARCHER: He did.

MR. ZUCKERMAN: May I see a copy?

MR. ARCHER: I will make arrangements during the interim to make some photographic copies. You're welcome to the original.

MR. ZUCKERMAN: May I have a few minutes?

JUDGE JANUS: Let's take a five-minute break.

(Whereupon, a short recess is taken.)

JUDGE JANUS: On the record.

MR. ARCHER: Without interrupting, can I ask one further question?

JUDGE JANUS: Yes.

Q (By Mr. Archer) I'm not clear whether you testified to this previously, Mr. Grupe. What, if any, conversation did you have with Mr. Kennedy, or whoever?

A No conversation, except I told him I couldn't accept the offer unless it was under ALA jurisdiction.

MR. ARCHER: Thank you.

CROSS-EXAMINATION

Q (By Mr. Zuckerman) Sir, I believe you testified earlier that you had twenty-eight or approximately twenty-nine years of pension rights with the ALA?

A Twenty-eight years.

Q How many years of that twenty-eight did you acquire by working at American Can?

A Twelve years.

Q Of the twenty-eight years, twelve years were years at American Can and sixteen years were with other companies?

A Right.

Q Did you observe lithographic equipment being dismantled at the Hudson plant?

A Right.

Q It was dismantled right out on the open floor?

A On the floor.

Q Some of it was reconditioned right out on that floor?

A Right on the floor.

Q Nobody was hiding it?

A No.

MR. ZUCKERMAN: Thank you. I have no further questions.

MR. GORE: I have no questions.

REDIRECT EXAMINATION

Q (By Mr. Archer) Mr. Grupe, do you know where that lithographic equipment went?

A The majority of it was marked Regency. It was written on the skids "Regency."

Q What equipment was that?

A Lithographic equipment.

Q Specifically what?

A Presses and coaters.

Q What kind of presses?

A Lithographic press.

Q Two-color, four-color?

A You got me. I don't recall which was which. I believe it was two single-color presses that were marked "Regency" on the skids.

Q During your testimony on direct examination you said that Marifjeren said something to the effect that the Edison plant was wall-to-wall steelworkers?

A Right.

Q Do you know what he meant by that?

A He meant there would be only one union, the steelworkers' union.

Q Was there any discussion at all during your conversation with Marifjeren about vacations?

A Not with Marifjeren. Al Reese said steelworkers got three weeks vacation.

Q How many weeks vacation were you receiving?

A We get four weeks plus a week of sick leave, which it's five weeks.

Q That was during the discussion with Marifjeren and Reese on October 12th?

A That's right. That was 1973

MR. ARCHER: Nothing further.

MR. ZUCKERMAN: No further questions.

JUDGE JANUS: Thank you.

MR. ARCHER: The next witness is Mr. Rizzardi.

Whereupon,

ROBERT RIZZARDI

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Archer) State your full name for the record and address.

A Robert Rizzardi, 1541 70th Street, Brooklyn, New York.

Q By whom are you employed, Mr. Rizzardi?

A American Can Company.

Q What's your job there?

A Litho press feeder.

Q How long have you been employed there?

A It will be eight years.

Q When?

A This August.

Q You're a member of the ALA?

A Yes, I am.

Q How long have you been a member of the ALA?

A Approximately sixteen years.

Q As a feeder, what is your function?

A We put the stock into the press. We watch how it runs, that there's no splotch up. We help the pressmen change over, and we change over with other pressmen. When he's busy, we

assist him changing blankets, mixing ink.

Q What type of press do you work on?

A Two-color.

Q Standard lithographic press?

A Yes.

Q Is there a standing crew on that press?

A Yes.

Q Other than the functions you've described, do you perform any other jobs?

A No, I don't.

Q First of all, what shift do you work on?

A I'm right now on the second shift.

Q When is that from?

A From 4:00 to 12:30.

Q Who's your shift foreman?

A Joe Sasoueski.

Q Is he a member of any craft?

A Yes, he's a member of the ALA.

Q Before becoming a feeder, or an operator, you might call it, what, if any, apprenticeship did you have?

A I served a four-year apprenticeship.

Q Where?

A I finished at American Can Company.

Q I refer you to the 12th of October 1973. Did you have occasion to have a conversation during that day with

Larry Marifjeren?

A Yes, I did.

Q Can you describe the circumstances?

A The night before Charlie Demburger, my foreman, told me Larry Marifjeren wanted to see me in the morning. I went up. I went into his office, and he introduced me to Al Reese, who was also present. He explained that they're looking for experienced help to go to the new Regency plant. I was one of the fellows that was picked. He turned to Al Reese, and Al Reese outlined the benefits that I would get. I said, "These benefits are United Steelworkers. I'm an ALA."

He says, "As of now, United Steelworkers has all negotiating rights to the Regency plant."

Q What other benefits were discussed?

A That they would give me seven years toward my pension rights. At that time I was working seven years. I would get two weeks vacation.

Q How many weeks of vacation were you receiving under the ALA contract?

A Five.

Q Did they offer you any--

A I would have to take an apprenticeship. They were offering me a pressman's job, which I would have to serve an apprenticeship of four years. I would have to go to school to Morrisville, Pennsylvania, for six.

Q Did they tell you what your rate of pay was?
A $4.00, $4.60 and change. I think it was $4.63.
Q What were you making at that time?
A $7.65.
Q What would be your work week?
A Thirty-two and a half hours. For ALA. Forty hours for Regency.
Q Was there any further discussion?
A No, there wasn't.
Q Did you accept the job?
A I told them I would let them know.
Q Did you, in fact, let them know?
A Yes. It was on the following Tuesday morning. I went into personnel office. Mr. Kennedy was there. I told him I would only go under the ALA contract.
Q Who else was with you?
A Three pressmen.
Q Who were they?
A George Grupe, Eddie Lemke, and George Poznaniski.
After I left Mr. Marifjeren's office, Frank Muller had stopped me.
A Who's Frank Muller?
A Assistant plant manager.
Q What did he say?
A He came up to me and said: "Are you going to take that

job? It's a good opportunity." I said, "I have too much to lose with ALA. I have fifteen years toward my pension." He said, "Remember, you're a young man and ALA is having a big unemployment problem right now."

Q You're still working at Jersey City for American Can?

A Yes, I am.

Q You testified you work on the second shift?

A Right.

Q You still perform the same functions as a feeder?

A Yes, I am.

Q Are the cans that you and the pressmen decorate still being put together at Jersey City?

A No, they're not.

Q Do you know where they're going?

A To Regency.

Q How do you know?

A By the loads that are being strapped up, and they're being tagged to Regency.

Q How do you know that, though?

A We put 060's number on.

Q What type of metal sheets are you decorating?

A Aerosol.

Q Other than Regency, when was the last time you can recall decorating a can for another plant, or at least was labeled for another plant?

A I couldn't recall offhand. I know we've had orders, say if we need them for Regency, to be shipped to Regency.

Q Was the work you do at Hudson ever returned as defective?

A Back to our plant?

Q Yes.

A Yes, it has.

Q How do you know that?

A It said returned to Hudson.

Q From where?

A Regency.

Q After your conversations of the Tuesday following October 12th with Mr. Marifjeren and Mr. Reese, what, if any, conversations did you have with company officials concerning your job?

A None.

Q You had no further conversations concerning transferring to Regency?

A None.

MR. ARCHER: No further questions.

MR. ZUCKERMAN: Has this gentleman given an affidavit to the Board?

MR. ARCHER: Yes, he has.

MR. ZUCKERMAN: May I have a copy?

MR. ARCHER: Yes.

CROSS-EXAMINATION

Q (By Mr. Zuckerman) Sir, you mentioned earlier that you were offered a position at Regency as, and if I'm wrong you can correct me, a litho operator-apprentice?

A Pressman apprentice.

Q You said that would have required an apprenticeship program?

A Right.

Q How many years did you say?

A Four.

Q Isn't that the same amount of time it would require you to become a journeyman pressman under normal ALA practices?

A Yes.

MR. ZUCKERMAN: I have no further questions.

CROSS-EXAMINATION

Q (By Mr. Gore) With respect to the pension benefits that you accrued through the ALA, how many of those years were at American Can?

A It would be eight years this August.

Q The remaining years were at some location other than American Can. Is that correct?

A Right.

Q I think you testified as to the specific time that you had the conversations with Mr. Reese. That was October 12, 1973?

A That was on a Friday. I wouldn't know the specific date offhand.

MR. ZUCKERMAN: May I have this document marked for identification, please?

(The document above-referred to was marked Respondent's Exhibit No. 2 for Identification.)

FURTHER CROSS-EXAMINATION

Q (By Mr. Zuckerman) Sir, I show you a document identified as Respondent's Exhibit No. 2, and ask you if you recognize that document?

A Yes.

Q Can you tell us what that document is?

A This is a document that we had signed. We went into personnel saying we would like a job at Regency plant.

Q I'm pointing to the eighth page from the back of that document. Those pages are not numbered. Do you find your signature on that page?

A Yes.

Q Would you tell us where on the page from the top, how many lines down, does your signature appear?

A Five.

Q Next to your signature did you put your clock number?

A Yes, I did.

Q You printed your name from the first column?

A Right.
Q Your clock number is in the second column?
A Yes.
Q Your signature is in the third column?
A Right.
Q Did you then put the date in the fourth column?
A Yes.
Q Is that the day you signed that document?
A December 22nd.
MR. ARCHER: What year?
Q (By Mr. Zuckerman) What year, sir?
A '72.
MR. ZUCKERMAN: I have no further questions.
JUDGE JANUS: Are you offering that?
MR. ZUCKERMAN: I will eventually, sir.
Mr. Archer, maybe you can clarify something. What is this date supposed to be?
THE WITNESS: I believe it's October 12th.
Q (By Mr. Zuckerman) October 12th, on page two of this affidavit?
A Right.
Q Do you recall the date that Mr. Marifjeren spoke to you in his office?
A I know it was in October on a Friday, but the exact date I wouldn't remember.

Q The month of October. It was on a Friday?

A Right.

MR. ZUCKERMAN: Thank you.

MR. ARCHER: I would be able to stipulate it's October 12th. That's what his testimony is.

REDIRECT EXAMINATION

Q (By Mr. Archer) Mr. Rizzardi, other than that document that Mr. Zuckerman showed you, do you recall signing any other documents?

A Yes, I do. There was another document that was signed. All of us there in the ALA were saying we wanted to go to the Regency plant under the ALA contract.

Q Do you recall whether you signed that document before or after the document Mr. Zuckerman has shown you?

A I don't recall. I believe it was after.

MR. ARCHER: May I have this marked for identification?

(The document above-referred to was marked General Counsel's Exhibit No. 9 for Identification.)

Q (By Mr. Archer) Mr. Rizzardi, I show you General Counsel Exhibit No. 9. Is your signature on that page?

A Yes, it is.

Q Where is it located?

A Third from the bottom.

Q This is the petition that you just testified to?

MR. ZUCKERMAN: Objection. He's characterizing the document.

JUDGE JANUS: I'll overrule the objection.

Q (By Mr. Archer) Can you answer the question?

A Yes.

MR. GORE: I'd like to know the date of that document.

MR. ARCHER: I'll offer it later.

MR. GORE: I think if General Counsel is going to have a witness testify with respect to that document that he signed, we're entitled to know the date of that document, at least, to look at it. I don't know if he's going to offer it subsequently or not, but I would like to see the date on it.

JUDGE JANUS: I think in view of the fact he testified this so-called petition or statement was signed after the one that Mr. Zuckerman identified, we ought to know what the date of that one is.

MR. ARCHER: Your Honor, I can make the assertion now there's no date on the document itself. That's why the necessity of the witness.

MR. GORE: May I cross-examine, if you're going to question him on it? I'd like for you to do so. I think the date is essential. At least with respect to the steelworkers, the date is essential.

MR. ARCHER: Wouldn't a more appropriate time be when I introduce testimony about it?

JUDGE JANUS: I think so. The situation is that Mr. Rizzardi's testimony and recollection is that he signed that statement or petition identified as General Counsel's 9.

MR. GORE: There's one question with respect to this.

JUDGE JANUS: Excuse me. Later than Respondent's Exhibit 2.

MR. GORE: My point is, though, if General Counsel introduces that document later, and he asked each witness did he sign that, I think I'm entitled to ask that witness, at least with respect to this memo, as to when he signed it.

JUDGE JANUS: I think you're entitled to cross-examine, and you may do so with Mr. Rizzardi, too.

RECROSS-EXAMINATION

Q (By Mr. Gore) Mr. Rizzardi, with reference to the document shown to you by counsel for General Counsel, the petition signed with your name third from the bottom, do you recall the approximate date that you signed that document?

A No, I don't.

Q Do you recall who passed that document to you for your signature?

A Angelo Campione, a delegate.

Q I beg your pardon?

A Angelo, the delegate.

RECROSS-EXAMINATION

Q (By Mr. Zuckerman) Sir, when Mr. Campione gave you

this document, what did he say to you?

A Nothing. He says just if I do want to go to the new union under what we're working now, under our union, to sign the paper.

Q The words that are typed on top of this document and say: "To whom it may concern, the undersigned employees employed by American Can Company at the Hudson plant represented by Local One, Amalgamated Lithographers of America, desire to work at the company's plant in Edison Township and to continue to be represented by Local One, ALA," were those words on top of the document when you signed it?

A Yes.

MR. ZUCKERMAN: No further questions.

JUDGE JANUS: Are you going to offer Respondent's 2?

MR. ZUCKERMAN: Yes, I shall. I offer it into evidence.

JUDGE JANUS: Mr. Archer?

MR. ARCHER: What is the purpose of offering it? You have a stipulation that you are going to, I understand, enter into later or offer. Doesn't that relate to this?

MR. ZUCKERMAN: What way, sir? If it relates to it, then it certainly is entitled to be admitted.

MR. ARCHER: You've shown one name on this list. You've indicated one name.

MR. ZUCKERMAN: Your Honor, this document is a document that consists of names, signatures of employees of American

Can Company at Hudson, who expressed a desire to work at the new plant at Regency. General Counsel has already elicited testimony from two witnesses that they had been offered jobs by Mr. Marifjeren.

In that connection, your Honor, it is pertinent that these gentlemen's names did appear. Mr. Rizzardi's name appeared on this list, that he had already expressed a desire to the company on December 22nd that he wished to work at Regency.

MR. ARCHER: We'll stipulate to that fact.

MR. ZUCKERMAN: Then I offer the entire document for whatever its value is.

JUDGE JANUS: I see no reason why it shouldn't be admitted. I'll receive it.

(The document above-referred to, heretofore marked Respondent's Exhibit No. 2, was received in Evidence.)

MR. ARCHER: To make it a complete document, why don't we offer the company notice of December 20th also.

MR. ZUCKERMAN: I have no objections to the admission of this document.

JUDGE JANUS: You wish to offer it?

MR.ARCHER: In light of Respondent's Exhibit No. 2, which says, "I want to be considered for employment at the new plant in Edison as per the company notice dated

December 20, 1972," I should like to offer into evidence a copy of this notice dated December 20, 1972. It's a notice to all employees; signed L. Marifjeren, plant manager.

JUDGE JANUS: Any objection?

MR. ZUCKERMAN: I have no objection to its admission.

JUDGE JANUS: It's received.

(The document above-referred to was marked General Counsel's Exhibit No. 10 in Evidence.)

JUDGE JANUS: I'd like to ask Mr. Rizzardi a question. With reference to that Respondent Exhibit 2 that's headed: I want to be considered for employment, et cetera, as per company notice dated December 20, 1972, when you signed this, had you been told by anyone the conditions of employment that you would be hired for?

THE WITNESS: No.

JUDGE JANUS: Anything further?

MR. ZUCKERMAN: Your Honor, Respondent's Exhibit No. 2 is an original document. May I have your permission to substitute two original Xerox copies?

JUDGE JANUS: Yes. Is it really necessary to put in the whole document? Why don't we just put in the page that Mr. Rizzardi's signature is on?

MR. ZUCKERMAN: I would prefer the entire document to go in.

JUDGE JANUS: Is it limited to lithographic production

employees?

MR. ZUCKERMAN: No, your Honor, it is not.

JUDGE JANUS: Any employee in the plant you wanted to sign it could?

MR. ZUCKERMAN: That's correct.

JUDGE JANUS: Permission is given to substitute duplicated copies for the original.

Anything further of Mr. Rizzardi?

MR. ARCHER: No, your Honor.

MR. ZUCKERMAN: No, your Honor.

MR. GORE: No, your Honor.

JUDGE JANUS: Thank you very much.

MR. ARCHER: I call Angelo Campione.

Whereupon,

ANGELO CAMPIONE

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Archer) Mr. Campione, would you state your full name and address for the record?

A Angelo Campione, 129 West Third Street, Clifton, New Jersey.

Q Are you presently employed, Mr. Campione?

A No.

Q Who were you formerly employed by?
A Bergen Can Company.
Q Where?
A Jersey City.
Q How long were you employed there?
A Twenty-seven years.
Q While you were employed at American Can, were you a member of the ALA?
A Yes.
Q Did you serve in any capacity?
A I was shop delegate for twenty-two years in the American Can.
Q Mr. Campione, I show you General Counsel Exhibit 9 marked for identification. Do you recognize this document?
A Yes.
Q What is it?
A I brought that around asking pressmen and operators if they wanted to work in the Regency plant.
Q Do you recall approximately when you brought that around?
A January 21st or 22nd of 1973.
Q You say you brought that around to operators and pressmen and asked if they wanted to sign it?
A On the three shifts, right.
Q I notice there are approximately fifty signatures on there. Did you personally witness those signatures?

A Yes. I brought this around personally.

Q Who signed this document?

A All the pressmen and all the operators and the two plate men we have.

Q What did you do with that document?

A I gave one to the executive vice-president Ed Anton, and one I brought up to Larry Marifjeren. I told him that everyone in the plant, in litho would like to go and work over at the Regency plant.

Q Did you give him a copy of this document?

A Yes, I gave Larry it. He thanked me and put it in his desk.

Q Do you recall approximately the date when you gave it to him?

A Approximately January 21, 1973.

MR. ARCHER: I offer into evidence General Counsel Exhibit No. 9.

MR. ZUCKERMAN: I have no objection to its admission.

MR. GORE: No objection.

JUDGE JANUS: I'll receive it.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 9, was received in Evidence.)

MR. ARCHER: No further questions.

MR. ZUCKERMAN: Did Mr. Campione give an affidavit to

the Board?

MR. ARCHER: No he didn't.

CROSS-EXAMINATION

Q (By Mr. Zuckerman) Who gave you this document, Mr. Campione?

A I asked Ed Hansen to send me a form.

Q You asked for it or did Mr. Hansen?

A I asked him.

Q What did you ask him?

A For a form they have. I didn't like the idea of pressmen and operators going down and finding a blank piece of paper. I called up Ed Hansen. I asked him for some kind of form. I asked the pressmen and the operators for their signatures.

Q You didn't think it was proper for pressmen and operators to sign the same piece of paper with other employees belonging to other unions?

A No, I didn't think it was proper.

Q For that reason you called Ed Hansen?

A That's right.

Q What did you say to Ed Hansen?

A To send me a form. I'd like to have the pressmen and operators sign their name stating that they wanted to go to Edison.

Q Did Ed Hansen say he would send you the form?

A That's right.

Q He sent you this form blank, with no signatures on it?

A That's right. It's as written up there with the type on.

Q He had already typed in the words on top?

A That's right.

MR. ZUCKERMAN: No further questions.

MR. ARCHER: I have no further questions at this time of this witness.

JUDGE JANUS: Thank you very much.

MR. ARCHER: The next witness will be Mr. Lemke.

Whereupon,

EDWARD LEMKE

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Archer) State your full name and address.

A Edward Lemke, 1400 6th Street, North Bergen, New Jersey.

Q By whom are you employed?

A American Can Company.

Q Where?

A Hudson plant in Jersey City.

Q How long have you been employed there?

A Sixteen years.

Q Are you a member of the ALA?

A Yes.

Q How long have you been a member?

A About twenty-seven years.

Q What do you do at American Can?

A Pressman.

Q What type of job as a pressman?

A We decorate metal. All the cans you see with decoration on, we do the decorating.

Q You operate the press?

A I run the press. I'm a pressman.

Q What type of press?

A Hoe press, tandem.

Q Is that a standard lithographic press?

A Yes.

Q Is there a standing crew on each press?

A Yes.

Q How many people?

A Pressman and then operator.

Q To the best of your knowledge, how many pressmen and operators are still employed at Jersey City?

A Twenty-four.

Q Other than your function as a pressman, what other jobs do you perform?

A No other jobs.

Q Where is the lithographic equipment located at American Can?

A On the 7th floor.

Q Is there any other on any other floor?

A No.

Q Who's your foreman?

A Right now it's Bob Kerner.

Q Is he the lithographic foreman? What function does he perform?

A He's the foreman of the floor. He runs the whole department on days.

Q Which department is that?

A The litho department.

Q Prior to Mr. Kerner, who was your foreman?

A George Rothwell.

Q In order to become a pressman, what, if any, type of training or apprenticeship did you require?

A I had to serve time as a junior journeyman. Before you become a pressman, you've got to operate a press for a number of years until you learn what you're doing. Then you eventually either become a junior journeyman or an apprentice. I became a junior journeyman.

Q Referring you to October 12, 1973, do you recall having a conversation with Mr. Larry Marifjeren during that day?

A Yes.

Q Can you describe the circumstances of that conversation?

A I was told Mr. Marifjeren wanted to see me. I went up to his office.

Q Who told you that he wanted to see you?

A One of the foremen, whoever was in charge of the floor that day. I think it was George Rothwell. I don't know if it was him or not, though. Whoever was in charge told me to go up.

When I went up there, there was Mr. Marifjeren.

Q Where did you go?

A There's another floor on top of the 7th floor. There's the 8th floor, where they have the offices.

Q What office did you go into; do you know?

A Mr. Marifjeren's office, I assume. It was the first time I ever been there.

Q Who was there?

A Al Reese and Mr. Marifjeren.

Q Did they introduce themselves, or did you know who they were?

A I knew Frank Muller. I was introduced to Larry Marifjeren and Al Reese, although I knew who they were before then.

Q Who were they?

A I knew them but not formally introduced to them.

Larry Marifjeren was describing a new operation in

Regency. He told me that the new plant was opening, that Hudson is going to close. They wanted me out there. Then he turned the conversation over to Mr. Reese to explain the contract with the steelworkers, because he said all the hourly employees are represented by the steelworkers.

So, Mr. Reese explained the contract, and he told me I'd have sixteen years seniority, and I would be entitled to the EEP, which is a vacation plan that they had that the ALA doesn't have, and the hourly rate, which was six dollars and something, approximately.

Q What were you making at Hudson at that time?

A $7.40 I think an hour.

Q How much vacation time did he offer you?

A I think it was two or three weeks.

Q How much vacation time were you receiving?

A Five weeks a year.

Q Go on.

A He told me about the seniority and everything like that. That in order to be employed, I would have to belong to the steelworkers.

Q He said that to you?

A Well, it had to be, because they represent all the hourly employees. He said that. I couldn't go there as an ALA.

So, I said I would think it over and let him know.

Q Did you think it over?

A Yes. One or two days later, I went into his office, but he wasn't there. There was Mr. Kennedy there. I went in with George Grupe, Poznaniski and Rosetti. We told him that we would go there but only under the ALA. He just took the message. He didn't say anything. He said he would deliver the message to Al Reese. Then we never heard anything.

Q Never heard anything further?

A No.

Q You're still working at American Can?

A Yes.

Q Still a pressman?

A Yes.

Q Still decorating cans?

A Yes.

Q After you decorate those cans, are they being put together at Jersey City?

A No.

Q Do you know where they're being put together?

A I assume they're being put together at Regency, because when they strap up a plate, they write it on cardboard where it's destined for. They have the Regency plant, and they do have a plant number, 060, which is on some of the metal that we decorate.

Q What type of cans have you been decorating?

A Aerosol cans, mostly; almost entirely now.

Q When is the last time you recall decorating a can for a plant other than Regency, or that was marked with an 060 on it?

MR. ZUCKERMAN: I object. I don't understand the question.

Q (By Mr. Archer) The question is: You've testified that you have been decorating cans and they've gone to Regency, and the reason you know is because they're stacked up and marked and the can number also indicates 060?

A That's right.

I can't recall. It was quite awhile ago that we decorated for a company other than Regency plant.

Q You mean a plant?

A A plant, yes.

JUDGE JANUS: Do you know what happened to the decorated tin plate at Hudson before the Regency plant was opened?

THE WITNESS: We used to make the can right downstairs. Right underneath us they had the facilities to make the can.

Q (By Mr. Archer) When did they stop making the cans at Hudson?

A About four months ago, three or four months ago. I'm not too good on the dates. I don't know exactly when anything happened, but it was about three or four months ago they stopped making cans.

Q Other than the twenty-four-odd lithographers that work on the 7th floor, to the best of your knowledge, who else is still working at the plant in Jersey City?

A We have one plate maker. That's an ALA man. All the rest are company employees.

Q How many are there, approximately?

A Approximately?

Q Yes. Do you see several around every day, one or two?

A I would say there's about sixty or seventy. I've seen on our floor maybe thirty other than the ALA men.

MR. ARCHER: I have no further questions.

MR. GILL: Your Honor, may I note my appearance for the record? I was tied up earlier and came here late.

My name is James Gill, 230 Park Avenue, and I represent Local One of Amalgamated Lithographers of America.

Would there be any objection if I put a few questions to this witness?

JUDGE JANUS: Go ahead.

DIRECT EXAMINATION

Q (By Mr. Gill) Sir, you say that this is a standard lithographic press you work on?

A Yes.

Q Would you tell us briefly something about the lithographic process? Where does it start?

A Well, it's a very complicated process.

Q Let's start with the beginning. Let's start with the camera, the lithographic camera.

A Yes. You have an artist that draws a picture or they take photographs of an object. Then you have a person photograph that object. From there it goes to a strip, or they do something else with it. I don't know exactly what they do.

Q First of all, you have a photo which is taken of the thing you're going to print. Is that right?

A Exactly.

Q Then the film goes to the stripping department?

A Yes.

Q They put things in place in the stripping department? They cut the film up?

MR. ZUCKERMAN: Objection, your Honor. If he wants to ask how the process is, fine, but not tell him.

JUDGE JANUS: Apparently, if he knows how it is done, all right. It really is not too relevant.

I suppose your purpose is in showing how the complete process is done and the fact it is a complicated process?

MR. GILL: Yes.

JUDGE JANUS: I know enough about the lithographic process to realize it is a complicated process.

Let's take it past the stripper.

Q (By Mr. Gill) After the stripping is done, what happens?

A Then the plate maker puts that impression on a piece of metal. Then with that piece of metal, we put it on a plate and that plate-- well, you've got to put ink in at the top. Then you have a system of rollers and isolating rollers that finally come down, and these form rollers contact the plate and distribute ink on it. That ink is transferred on to a rubber blanket. The rubber blanket is what actually hits the metal that you're printing. Then we have the bottom cylinder to form what they call a pressure cylinder.

That's what the process is.

Q A plate is burned with an arch lamp, right? Is that the way it works?

A I'm pretty sure that's what they do.

Q The plate is placed on your press?

A We put the plate on the press.

Q If you run your hand over the surface of the plate, would there be a raised surface and sunken surface, or would it be flat?

A It's flat.

Q How does the plate absorb the ink? How does that work?

A Certain parts of the plate are what they call sensitized, and they pick up ink. The other parts of the plate are not sensitized.

We have a system of water and acid that prevents parts of the plate that we don't want to pick up ink. They don't

pick up ink.

Q The non-printing portion of the plate repels the ink, and the printing portion of the plate absorbs the ink?

A That's right.

Q You say the plate itself doesn't touch the metal directly, but rather it touches--

A Transfers into a blanket, and the rubber blanket is what puts the print on.

Q Is this where they get the word offset?

A That's where it comes from.

Q Do you have to maintain a certain amount of balance with respect to ink versus water?

A Oh, yes.

Q What would happen if you had that out of kilter?

A You would get a bad image. You'd get a frayed image of too much water. If you don't have enough, you get a dryup.

Q You have to have a certain balance of water versus ink. Is that right?

A That's true.

Q What about the pressure that's involved here that you talked about? Tell us something about that.

A Every area around the pressure has to be set a certain way. They've all got to be contacted just to a certain degree, no more. They could be a little more, but no less; otherwise you don't do the ink right.

Q Is that called the lithographic kiss, the proper amount of pressure?

A That's the feel between the two different rollers.

Q If you have too much pressure, what happens to your metal?

A You won't print. You have a series of dots. If you have too much pressure, all those dots will tend to run together and it will smear. That's what happens.

Q If you don't have enough pressure, what happens?

A You have no image.

Q A mist?

A A mist, that's right.

JUDGE JANUS: Can't we take official notice that the Board has considered lithography to be a craft?

MR. GILL: Fine.

JUDGE JANUS: Any questions, Mr. Zuckerman?

CROSS-EXAMINATION

A (By Mr. Zuckerman) Sir, isn't it true that at Hudson you never made the plates at Hudson; the plates were always made someplace else and brought in?

A As far as I know, yes.

MR. ZUCKERMAN: Mr. Archer, I notice this affidavit is rather chewed up at the bottom.

MR. ARCHER: You have to speak to the Board agent about that.

MR. ZUCKERMAN: There's nothing that's been deleted from that chewout has there?

MR. ARCHER: It's my understanding there's nothing that has been deleted.

Q (By Mr. Zuckerman) Mr. Lemke, I show you this document. Can you identify it for us?

A It's got my signature on it. I can't read it, though.

Q Is that your signature on the bottom?

A That's my signature.

Q That's an affidavit you gave to the National Labor Relations Board?

A That's it.

Q Is there a date on that?

A 19th of October, 1973.

Q You testified that on October 12th, Mr. Marifjeren called you in and asked you if you were interested in working at the new plant in Edison. Is that correct?

A That's right.

Q What did you say to Mr. Marifjeren at that time?

A I told him I'd let him know, but I didn't think I would be taking it.

Q In your affidavit you state: "I said I would only--there's got to be a word missing, but I'm quoting it as I read it.

The paragraph reads as follows: "On October 12, 1973,

Marifjeren called me in and asked if I was interested in working at the new plant in Edison. I said I would only in the ALA contract."

MR. ARCHER: Perhaps for your clarification, that's supposed to be a "with." I've seen those before. "I think I would only with the ALA."

Q (By Mr. Zuckerman) Did you tell Mr. Marifjeren that on that date?

A No. I told that to Mr. Kennedy a couple of days later.

Q According to your affidavit, Mr. Marijeren said, "I don't have any jurisdiction. They already voted, and the steelworkers represent the hourly workers."

Mr. Marifjeren said that?

A To the best of my knowledge, that's what he said.

MR. ZUCKERMAN: Your Honor, I would offer this document in evidence.

JUDGE JANUS: Are you offering it because there's some variation between that and his testimony?

MR. ZUCKERMAN: There's one variation in there, in that the affidavit stated that Mr. Lemke said on the October 12th meeting that he informed Mr. Marifjeren at that time that, "I would only with the ALA." And the gentleman just testified he did not say that at that time.

JUDGE JANUS: Then, under cross-examination he's changed his testimony. Isn't that the effect of it?

MR. ZUCKERMAN: Yes.

JUDGE JANUS: Do we need the affidavit?

MR. ZUCKERMAN: I would like to have the affidavit admitted.

JUDGE JANUS: Maybe we can clarify it.

Well, rather than take an awful lot of time clarifying it, I think he's testified to it. But if Mr. Zuckerman thinks there's some merit in having the evidence in, I'll receive it.

MR. ARCHER: Again, objection. He's testified.

JUDGE JANUS: I'll overrule your objection.

(The document above-referred to was marked Respondent's Exhibit No. 3 and received in Evidence.)

MR. ZUCKERMAN: I have no further questions.

MR. GORE: I have no questions.

REDIRECT EXAMINATION

A (By Mr. Archer) Mr. Lemke, during that conversation on October 12, 1973, with Mr. Marifjeren, he asked you whether you would be interested in working at the new plant in Edison?

A That's right.

Q What did he say to you then?

A He asked me. He thought I was a competent worker. He says he's starting a new plant. He wanted select personnel from the old plant to work in the new plant, and he said I was

one of the ones he wanted. When they left, I know I said I'd let them know, but I don't think I would do it.

Q Why did you say that?

MR. ZUCKERMAN: Objection.

Q (By Mr. Archer) Was there any reason why?

JUDGE JANUS: I'll overrule the objection.

Q (By Mr. Archer) Why did you say that?

A Because I thought it was foolish to leave the ALA to work in Regency under the steelworkers' contract.

Q Did you make any reference to that during your conversation with Marifjeren?

A I said it would be harder to run a press in Regency because the jobs would be harder.

Q Did you make any reference at all during your conversation on October 12, 1973 to your desire to continue the work under the ALA contract?

A I said I would. I said that to Mr. Kennedy in his office, in Al Reese's office, when Al Reese wasn't there.

Q Did you say that to either Mr. Marifjeren or Mr. Reese?

A I don't recall whether I said-- when I said it to him-- they all represent the company.

MR. ARCHER: No further questions.

MR. ZUCKERMAN: No questions.

JUDGE JANUS: Thank you very much.

Off the record.

(Discussion off the record.)

JUDGE JANUS: On the record.

In our off-the-record discussion, I raised a point with Mr. Gill regarding a stipulation that he's not to look at, that General Counsel and Respondent have agreed to, I think. Mr. Gill said that he would prefer to look at it overnight and come back tomorrow morning with his decision on whether to agree.

Mr. Zuckerman then pointed out there's an outstanding subpoena request, and Mr. Archer has just given me a motion to revoke the subpoena which was served on Mr. Isenberg, the Regional Director of Region Twenty-two.

MR. ARCHER: Yes, your Honor.

JUDGE JANUS: Mr. Archer has also given me a memorandum in support of the position to revoke the subpoena.

We'll go off the record for a few minutes while I read these documents.

(Discussion off the record.)

JUDGE JANUS: On the record.

Mr. Zuckerman has pointed out to me in an off-the-record discussion that he hasn't had a chance to look at it, and it's an eight-page document. I haven't looked at it. I would prefer to have some time to consider this before I rule on it, and Mr. Zuckerman may want to make some arguments with respect to it that I should hear before I come to a decision.

I think it would be best if the matter of the subpoena and the motion to revoke were held over until tomorrow morning.

We'll be in recess until 10:00 o'clock tomorrow morning.

(Whereupon, at 5:05 o'clock p. m., the hearing in the above-titled matter was recessed.)

BEFORE THE NATIONAL LABOR RELATIONS BOARD

TWENTY-SECOND REGION

- x

In the Matter of: :

AMERICAN CAN COMPANY :

and :

LOCAL ONE, AMALGAMATED LITHOGRAPHERS OF AMERICA, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO. :

Case Nos.
22-CA-5619
22-CA-5803
22-RC-5853

- x

970 Broad Street
Newark, New Jersey

Thursday, May 30, 1974

The above-entitled matter came on for further hearing, pursuant to adjournment, at 10:00 o'clock a.m.,

BEFORE:

MILTON JANUS, Administrative Law Judge.

APPEARANCES:

ROBERT ARCHER, ESQ., 970 Broad Street, Newark, New Jersey, appearing on behalf of the General Counsel.

JAMES GILL, ESQ., 230 Park Avenue, New York, New York, appearing on behalf of Local One.

DAVID L. GORE, ESQ., Five Gateway Center, Pittsburgh, Pennsylvania, appearing on behalf of United Steel Workers of America.

MARTIN B. ZUCKERMAN.ESQ. Simpson, Thatcher & Bartlett, One Battery Park Plaza, New York, N.Y., appearing on behalf of American Can Company

I N D E X

Witnesses	Direct	Cross	Redirect
Larry Marifjeren (Voir Dire-214)	190 (Archer)	203 (Gill)	235
Allen Olmstead	237 (Archer)	250 (Gore)	
Charles Amorese	246		
Julian Posnanski	250		
Charles Amorese (recalled)		257	263
Julian Posnanski (recalled)		264	265
Larry Marifjeren (recalled)	274	283	
Henry A. Ries	290	291 305	
William J. Leser	308	315	

E X H I B I T S

	Ident.	Evidence
Charging Union's		
1	214	215
2	216	216
Respondent's		
4	229	230
5	311	314
6	314	315
7	321	
8	321	322
9	322	323

I N D E X

E X H I B I T S
(Continued)

General Counsel's	Ident.	Evidence
11A&B	237	239
12	244	245
13	245	245
14	245	245
1-P, Q, R		257

PROCEEDINGS

JUDGE JANUS: The hearing will be in order.

When we recessed last night, two things were left in abeyance: The first, a matter of a stipulation that Mr. Gill was going to look at before the session this morning and report back to us.

Have you had a chance, Mr. Gill?

MR. GILL: I have, your Honor. I prefer, if I may, to wait until after the next witness has been called to tell you my views on the subject.

JUDGE JANUS: All right.

The second matter was a subpoena for the production of case files, petitions, correspondence, memoranda relating to Case No. 22-RC-5853.

In connection with the subpoena, Mr. Archer has given me and the other parties a memorandum in support of a petition to revoke the subpoena which was direct to the Regional Director, Mr. Eisenberg.

I have read Mr. Archer's motion. I am prepared to hear anything Mr. Zuckerman wants to say on the matter.

MR. ZUCKERMAN: Thank you, your Honor.

I think a little bit of explanation is necessary at this point.

When this proceeding began with the filing of the very first charge back on September 28th of 1973, when we

started to investigate this case from our side of it, we had believed that a certain telephone call was made by a representative, who we did not know, of the ALA to the Board sometime prior to the election advising that they had an interest in the election that was going to take place.

From September 23rd until about last week, we believed that a telephone call had been made.

We so informed the Board Agent that was investigating the case, and at no time were we led to believe anything else, anything other than that.

About ten days ago -- a little bit more -- about fourteen days ago, as a result of an off-chance and very casual discussion that I was having with somebody, it suddenly came to light that there was a possibility of a letter in existence, that the telephone call hadn't taken place, that a letter had been sent in its place.

A week ago Monday, I called Mr. Archer and asked him if such a letter, in fact, existed, and Mr. Archer then told me it did exist.

I asked for a copy of that letter. Now, up until that time until I asked the question, the Board never volunteered to me that they had a piece of paper in their possession that was certainly necessary to the defense that I had been raising all along in this case.

Nobody volunteered. Everybody sat on it. To this day,

I do not have a copy of that letter.

Yesterday Mr. Archer briefly showed it to me. He has still refused to give me a copy, although, to be honest, he has stated and has represented to me he intends to put it in evidence.

Yet, I still don't have a copy. When all of this transpired, and we suddenly realized that there was this letter in existence in Board files, a letter which Board had seen fit for one reason or another not to disclose to the respondent, it then became apparent to us that there may be other documents in that file that are necessary for our defense.

We don't know what's in that file. We have been misled from September of '73 all the way up until now by the Board's silence in face of what we were telling them was our belief, and we therefore felt it necessary and compelled to issue the subpoena to the Regional Director seeking the documents in that file.

That's Point 1, your Honor.

Point 2: Mr. Archer in his petition states that the subpoenaed material is immaterial and unnecessary to the proper rendition of justice, and that's just not true.

This Board has put into issue, at least through Mr. Archer's opening statement of yesterday, what its knowledge was at the time of the election.

Mr. Archer said yesterday that the Board was not aware

of the interest of the ALA. That was part of his opening statement.

Once the Board puts into contention what it knew, then I suggest it cannot sit on that file and withhold the evidence which proves what they did know or did not know.

At that time, that file becomes material and subject to subpoena.

Now, I've read Mr. Archer's document. Some of this material that Mr. Archer has put in here relates to unfair labor practice files.

I'm not asking for unfair labor practice files. I'm asking for the R Case file, and that is what my subpoena was directed to, not to the C Case files.

Now, because of the situation, and how it has developed, Mr. Archer's -- when I say Mr. Archer, I mean the Board. I'm not personally accusing Mr. Archer. The Board is sitting that letter and not disclosing -- an only disclosing it after we've asked a question, plus the putting into issue of the knowledge of the Board.

I believe, your Honor, we are fully entitled to see that case file at this time.

MR. GILL: Your Honor, I think we can cut this very short. We've no objection to giving a copy to Mr. Zuckerman, if that's what the problem is.

MR. ARCHER: I don't want to cut off Mr. Zuckerman's

argument and, rather than lengthen the record any further, my first conversation, the first request I ever had for that letter, as Mr. Zuckerman correctly stated, at that time we discussed the contents of that letter, and I indicated to him at that time, which was some length of time ago, that I would produce a copy of that letter at the hearing.

Although I plan to call a witness on the letter, and I've indicated to him previously that I would, I would be most happy, if this would shortcut this discussion, to hand him a copy of the letter now.

JUDGE JANUS: What you are concerned with, Mr. Zuckerman, is any knowledge the Board may have had of the ALA's interest in the R Case proceeding?

MR. ZUCKERMAN: Board's knowledge of the interest of the ALA, Board's knowledge of the -- all of this has become very crucial, your Honor.

MR. ARCHER: Mr. Zuckerman is aware of this from his past experience as a Board Agent, and what knowledge we would have, due to the number of unions and companies we deal with, any interest with respect to the lithographers would be derived from one of the parties to the R Case proceeding.

You know, how can we adduce testimony -- the only knowledge we would have of any interest of the lithographers, which, in fact, we did have, was from conversations with the

respective parties to the R Case proceeding as well as that one letter that was delivered the night before the election, and we are willing to explain the circumstances of that.

JUDGE JANUS: When you say "conversations with the parties," what parties do you mean, Steel Workers?

MR. ARCHER: I would say the employer and the union.

MR. GILL: What union?

MR. ARCHER: The Steel Workers.

JUDGE JANUS: Steel Workers and the company.

MR. ARCHER: As a matter of procedure --

JUDGE JANUS: Do you have any other written communications in your file relating to the interest of the ALA, other than the letter?

MR. ARCHER: No, your Honor, we do not.

MR. GILL: Your Honor, I can state that what happened was, that when we first learned of the election which was to take place, Ben Robinson of our firm dictated a letter and gave it to Mr. Olmstead for hand delivery to the Board indicating that we had an interest in the election.

That letter was delivered the day before the election. Unfortunately, nothing happened. The election went forward, but that's the background of all this.

I personally have no objection to giving Mr. Zuckerman or anyone else a copy of the letter.

JUDGE JANUS: Well, I think the usual rule about

disclosure of information in Board's files is that argued by the General Counsel in his memorandum to revoke the subpoena.

As a practical matter, it appears that the information you are concerned with, Mr. Zuckerman, will be turned over to you as part of the exhibits in the case.

I have Mr. Archer's assurance that there is nothing else in the file, and I'm not sure that any other information that might be contained in the file as to ALA's interest is of any concern in view of the letter preceding the election.

It seems to me that the Board was aware of it, and for reasons I don't know yet, it decided to go ahead with the election, anyway.

Whether that was a foul-up or a policy decision, I don't know.

I'll grant the General Counsel's motion to revoke the subpoena.

MR. ZUCKERMAN: Your Honor, I would move that this portion of the transcript be included in the official record.

JUDGE JANUS: It is.

MR. ZUCKERMAN: May I have a copy of the letter that everybody is willing to give me?

JUDGE JANUS: Yes. Do you intend to offer it? I think it ought to be in the formal exhibits, and if you are electing

to offer it as your exhibit, I will take it and make it an exhibit of the Administrative Law Judge.

MR. ARCHER: No objection.

JUDGE JANUS: Or it may be that ALA wants to offer it.

MR. GILL: Yes, your Honor, we would want to put in the circumstances surrounding the letter and the letter itself.

JUDGE JANUS: Do you want to do that in connection with a witness that you expect to call?

MR. GILL: Yes, your Honor, we expect to call Mr. Olmstead.

JUDGE JANUS: Why don't you show Mr. Zuckerman a copy of the letter now?

MR. ARCHER: If we can go off the record for a minute.

JUDGE JANUS: Off the record.

(Discussion off the record.)

JUDGE JANUS: On the record.

Do you have any more witnesses, Mr. Archer?

MR. ARCHER: Yes, your Honor.

I call Larry Marifjeren.

L A R R Y M A R I F J E R E N , called as a witness, having been first duly sworn by the Administrative Law Judge, testified as follows:

DIRECT EXAMINATION

BY MR. ARCHER:

Q Mr. Marifjeren, will you state your name and address

for the record, please?

A Larry L. Marifjeren, 1242 Sleepy Hollow Lane, Scotch Plains, New Jersey.

Q By whom are you employed, Mr. Marifjeren?

A American Can Company.

Q Where are you employed by American Can Company?

A Regency Plant, Edison, New Jersey.

Q What is your job at Regency Plant?

A Plant manager.

Q Are you the senior official at that plant?

A I am.

Q Were you formerly the plant manager at the Hudson Plant?

A That is correct.

Q Are you still the plant manager at the Hudson Plant?

A That is correct.

Q Are you the senior official at the Hudson Plant?

A That is correct.

Q How long have you been plant manager at Hudson?

A Since October, 1971.

Q In your capacity as plant manager at Hudson and in your capacity as plant manager at Regency, then, you would be knowledgeable as to the surroundings or the circumstances of the closing of the Hudson Plant and the opening of the Regency Plant?

A The area of my responsibility that relates to the closing

of Hudson and the start-up of Regency Plant I would be knowledgeable of.

MR. ARCHER: At this time, your Honor, I would like to apply under Rule 43(b) to examine this witness.

MR. ZUCKERMAN: Your Honor, there has been no indication at this time that the Rule must be invoked.

JUDGE JANUS: He is obviously the top official for American Can in that geographic area with respect to the two plants involved.

I will invoke the Rule.

Q Since the commencement of operations at Regency, you have been plant manager, haven't you?

A That is correct.

Q When did operations commence at Regency? My understanding is, operations commenced at Regency approximately July of 1973.

A That would be correct, limited operations.

Q There is a lithographic department at Regency, isn't there?

A A lithographic department?

Q Yes.

A "Department" is a misnomer. We have a lithographic operation at Regency Plant.

Q In that lithographic operation, you decorate flat metal sheets by the use of a lithographic press, don't you?

A That is correct.

Q You also decorated flat metal sheets by the use of a lithographic press at Hudson?

A That is correct.

Q As I understand it, there are presently two lithographic presses in operation at Regency?

A That is correct.

Q And both of those presses, a single color and a two-color press, came from Hudson Plant?

A That's right.

Q You also are in the process of putting in a tandem press at Regency?

A That is right.

Q And that press was from the Hudson Plant.

A That is correct.

Q And, as I understand it, you plan to install two further lithographic presses at Regency?

A That's correct.

Q And both of those presses are from the Hudson Plant?

A At this point, they are coming from the Hudson Plant.

Q Okay. You have an oven you use at Regency, don't you?

A We will have printing ovens on four of the lithographic lines at Regency Plant.

Q But these ovens have come from Hudson?

A The litho ovens have come from Hudson.

Q You presently have three lithographic supervisors at Regency, don't you?

A No, I have four.

Q Mr. Demberger, your general supervisor, is from Hudson?

A Mr. Demberger is department supervisor, and he is from Hudson.

Q And your first shift foreman in the lithographic department, Rothwell, is also from Hudson?

A That's correct.

Q And Mr. Leever, your second shift foreman, is also from Hudson?

A That's correct.

Q Okay.

And as I recall from the affidavit you previously gave to the Board, your customers, at least at the time of the giving of the affidavit, were the same customers for both Hudson and Regency?

A The majority, yes. This is a never-ending situation, but the answer is Yes.

Q As of the affidavit you gave on November 12th, if I can recall that, you stated in that affidavit that all the cans at that point that were decorated for Regency came from Hudson.

Do you recall making that statement in the affidavit?

A At that time, that would be right.

Q You are going to have five presses, as I understand -- you contemplate at this time five presses at Regency, is that correct?

A That's correct.

Q Okay.

And I would assume that ultimately you will have three shifts at Regency?

A This can vary. Our plant is not to have three shifts. We may have a three-shift operation during start-up and try-out periods.

Q So, potentially, I would assume, you would have a standing crew on each press of an operator, of an assistant pressman and a pressman?

A By shift?

Q No, on each machine by shift.

A For those units that would be scheduled.

Q Potentially, you could have as many as thirty either operators or assistant pressmen, as you call them, or pressmen, is that correct?

A That would be right.

Q As I understand it, you presently have five pressmen at Regency?

A No, that's incorrect.

Q How many are there?

A I have seven. You are talking about journeymen

lithographers?

Q Yes.

Were any of those journeymen lithographers formerly employed at Hudson?

A No.

Q When was the first journeyman pressman hired at Regency?

A I would have to make an approximate stab. I'm going to say about December of 1974, thereabouts.

Q But the actual litho operation commenced in February of 1974?

A We started try-out on our first litho press in February of 1974.

Q But in actuality, the litho operation didn't commence until approximately April of 1974?

A No, no. We have been in commercial production since about February in our lithographic operations in one degree or another.

Q What stage of operation -- are you at full capacity yet, or are you waiting -- what is your potential production at Regency?

A We have enough printing capacity when the installation is complete at Regency to take care of all of our present manufacturing requirements for Regency Plant.

Q Now?

A Not now, when the installation is completed.

Q When will it be?

A Because we are still in a state of installation, these dates are kind of hard to come by.

Q Approximately?

A I would say that by the end of, possibly, July, or thereabouts, we ought to be in a position to take care of the majority of our lithographic requirements at Regency Plant.

Q Now, the lithographic operation at Hudson is still in operation?

A Limited operation, yes.

Q When will that be phased out, about July?

A Approximately around the latter part of July.

Q When the Regency Plant is in full operation?

A Regency may or may not be in full operation at that particular time.

Q Is one contingent upon the other?

A To a degree, they are contingent one upon the other.

Q Now, it is my understanding from the affidavit you gave to the Board that on October 12, 1973, you interviewed five lithographers, either operators or pressmen, in your office or another office in, we will say, the headquarters?

A In my office at Hudson Plant.

Q Those were Mr. Gropi, Mr. Rozzadi, Mr. Amorese, Mr. Posnanski and Mr. Lemky, is that correct?

A That's correct.
Q At that time you offered them jobs at Edison?
A At Regency.
Q You further advised them at that time that they had to become members of the Steel Workers?
A They were advised at that time that Regency Plant was a Steel Worker location.
Q But in order for them to work at Regency, in effect they would have to become Steel Workers?
A There is no question about it.
Q You further advised them at that time that in most instances they would have to accept approximately $2.50, or a $3.00 decrease in pay?
A That is incorrect.
Q Mr. Ries read them a contract?
A Mr. Ries -- they were advised what the existing labor rates were for lithographers --
Q These existing --
A of Steel Worker contract.
Q Which were substantially less than what they were then receiving?
A I'm not that familiar with the rates one versus the other.
Q You don't recall?
A I recall Mr. Ries explaining what the rates were for

lithography work at Regency Plant. I don't recall a comparison being made, the Steel Workers versus the ALA, in my office.

Q At the time you interviewed these gentlemen -- you had received a copy of the petition that Campione had handed you some months before?

A Mr. Campione did present me with a list, that is correct, in my office.

Q And you had received a copy of that letter from Mr. Hansen about the same period of time?

A I received a copy of a letter from Mr. Hansen, that's correct.

Q What did you do with those documents?

A In the case of each of the two documents, I immediately turned them over to my general supervisor of employee relations, Mr. Ries.

#2 Q So you were aware at the time that you interviewed these five individuals of an interest that the ALA had in representing any employees that might be transferred?

MR. ZUCKERMAN: Objection, your Honor. We've got to get the dates of that. We are talking about a time between January of 19 --

MR. ARCHER: The question was whether he is aware.

JUDGE JANUS: Well, he admitted that he had seen the request by the ALA members for employment at Regency. Isn't

that sufficient?

Q In fact, these five employees that you interviewed never took jobs at Regency, did they?

A That's right.

Q How do you know that?

A I was advised by Mr. Ries.

Q You were advised by Mr. Ries that they --

A I was advised by Mr. Ries that they decided not to go to Regency Plant.

Q So, on October 15th -- from October 15th onward, until the present, have you ever interviewed another lithographic employee for a job at Regency?

A From where?

Q From Hudson.

A No.

Q Why not?

A We have been assigning lithographers at Regency Plant as the need arises. We have been fortunate that we have had applicants off the street, journeyman lithographers, and on the basis of that, we have been hiring them as the need arises.

Q As the need arises.

But in the interim, from October to the present, at no time have you had less than approximately twenty-five lithographers working at Hudson? You didn't feel it necessary to

interview any of them for jobs at Regency?

You had people there that were qualified, had ten, fifteen years' experience, and you didn't feel it necessary to interview one of them?

A No, we -- in the classification of lithographer, we used the same format as we did with the rest of the skills that were in the Hudson Plant.

We interviewed those who we thought would make good lithographers at Regency Plant, and these five employees had excellent track records at Hudson Plant, and it was based upon their job performance, merit, and so forth, that we decided to interview them for Regency.

Q You felt there were no other lithographers qualified for transfer?

A No, I wouldn't say that we felt there were no others that were qualified. But at the time we were still getting good, solid applicants off the street, they were available, we hired them based on their background and years of experience.

Q How many Steel Workers applied for the jobs -- how many Steel Workers did you interview for jobs at Regency?

A From where?

Q From Hudson.

A We interviewed approximately 216, total employees.

Q Including the five lithographers?

A That's right.

Q How many of those accepted jobs -- of those interviewed accepted jobs at Regency?

A Ninety-five, approximately.

Q Were you aware that a petition was filed by the Steel Workers to represent the production and maintenance employees at American Can?

A Was I aware?

Q Yes.

A That a petition for the Steel Workers --

Q Right.

A Yes. I was aware that an election was to be held at Regency Plant.

Q The lithographers that are presently employed at Regency, are they members of the Steel Workers Union?

A Yes.

Q Do they pay checkoff dues?

A I can't answer that. I'm not sure. I'm not sure. That's an accounting function. I'm just not --

Q Who would be aware of that?

A Mr. Ries may be aware of it. My plant accountant would be aware of it.

MR. ARCHER: Do you want to stipulate to it?

MR. ZUCKERMAN: We will stipulate that they are paying checkoff.

Q So, actually, as I understand it, in at least December of 1973, you did not employ any lithographer production employees at Regency, is that correct?

A That were working at Regency Plant?

Q Right.

A I believe there was one hire that may have started in December of '73, thereabouts. It may have been December or January of '74.

We did have two, a lithographer, an apprentice pressman in training in Morrisville Training School.

Q As I understand it, shortly after the certification by the Board of the Steel Workers as the bargaining representative for the production and maintenance employees at the Regency Plant, the Steel Workers' contract was applied to them, the master contract?

A The master contract, yes.

Q At a time that there were no lithographers?

A I would have to say -- it was applied whenever the NLRB certified the election. Whenever we got -- as to whether I had lithographers at that precise time, I can't recall, unless I go through some notes.

MR. ARCHER: I don't have any further questions.

JUDGE JANUS: Mr. Gill.

CROSS-EXAMINATION

BY MR. GILL:

Q Mr. Marifjeren, do I understand that the lithographic equipment which you now have at the Regency Plant came from the Hudson Plant, is that correct, sir?

A That equipment, which is presently there, the litho equipment, has come from Hudson Plant, that's correct.

Q And that equipment consists of what, again, how many pieces are there?

A In total, there will be five press lines at Regency Plant.

Q How many presses do you have at Regency that came from Hudson now?

MR. ZUCKERMAN: He has already testified to this, your Honor.

JUDGE JANUS: Well, I don't remember, either.

What's the answer?

A I have three press lines presently at Regency that come from Hudson Plant.

Q And the foremen are the same at Regency as they were at Hudson, is that right?

A So far.

Q And, I gather that the process is the same, is that right?

A No. There are some changes to the process at Regency Plant as it relates to Hudson Plant.

Q Are you still decorating aerosol cans at Regency by means

of lithography?

A That's correct.

Q Is that what you were doing at the Hudson Plant?

A At Hudson Plant we decorated tinplate for just about all product lines in the industry.

Q It is lithography that's taking place at Regency?

A That's correct.

Q Are you servicing the same customers at Regency that you were servicing at the Hudson Plant?

A I would have to answer that saying, primarily yes, there is always a change in customers in one particular product line. You get some, and you lose some.

Q Eventually, will all of the customers that are currently being serviced at the Hudson Plant be serviced at the Regency Plant?

A Yes. In aerosol?

Q Yes.

A Yes.

JUDGE JANUS: Is the Regency Plant going to be limited to aerosol cans?

THE WITNESS: That is correct, your Honor.

Q Can you tell me when the decision was first made to close the Hudson Plant?

A August, 1972.

Q 1972. When was the first time that notice was given to

the employees at the Hudson Plant with respect to the closing?

A August, 1972.

Q Was that a notice that was posted, or was that verbal, or what?

A It was a letter.

Q It was a letter which went to each employee?

A I would say Yes.

Q Including the lithographers?

A I posted a letter on all of the bulletin boards.

To the best of my recollection, we submitted a copy of that letter to all employees.

Q In August of 1972?

A I can't recall.

Q Was there a notice that was posted on December 20, 1972? Are you familiar with that notice?

A I am.

Q Are you saying that that was not the first notice that was given to the employees with respect to the shut-down, that there was a previous notice?

A There was a notice that was given to the employees in August about the Hudson Plant closure.

The second part of your question was relating to what, December?

Q Yes.

A December of '72, a decision was made at that time to open a manufacturing facility to absorb a portion of the business at Hudson in Edison, New Jersey.

Q That notice of December 20, 1972 --

MR. GILL: Is that in evidence? May I have that?

Q I show you General Counsel's Exhibit No. 10, which is the December 20 notice.

Was that notice of December 20 directed to all employees?

A That's correct.

Q Including the lithographic production employees?

A That's correct.

Q And the notice indicated that the operations at the plant would cease on August 31, 1973, is that correct?

A That's correct.

Q And at that time it was your intention to terminate the lithographic operation at the Hudson Plant, is that right, by that date?

A It was the intention at that time to terminate all manufacturing at Hudson Plant by August 31, 1973.

Q The lithographic operation at the Hudson Plant did not, in fact, terminate on August 31, 1973, did it?

A That's correct, it did not.

Q What happened?

A Well, there have been various changes to the installation

schedule at Regency Plant, primarily in the litho and coating portion.

A lot of this is due to various codes that had to be met, the new OSHA regulations, which caused delay in installation and so forth.

This is continually being updated.

Q Well, had any part of the lithographic operation at the Hudson Plant been phased out as of August 31, or was it still in full swing?

A August 31 of 19 --

Q 1973?

A Yes, there was a shrinking program that was in effect at that time. The business was being relocated.

Q How many lithographers did you have employed there on December 20, 1973, approximately?

A December 20, 1973?

Q '72, I'm sorry.

A '72?

Q The time of the notice, right.

A I would estimate approximately sixty, without checking time cards.

Q Okay.

How many were employed there on December 31, 1973 -- I'm sorry -- August 31, 1973?

A It would be less than sixty. I don't have that

information.

JUDGE JANUS: I think a lot of this information was obtained yesterday, wasn't it, about the complements, the varying sizes of the complements of employees?

MR. ARCHER: The testimony, as I remember, was at full capacity. In December, '72, there was sixty, and at the present there are twenty-four.

THE WITNESS: There has been a gradual shrinking program all during this period.

Q You testified, I believe, that Mr. Campione had given you the Local One petition.

A Mr. Campione presented to me a list of ALA members who desired consideration for employment at the Regency Plant; that he did do.

Q When was that, approximately?

A I really can't recall approximately when it was.

Q January of '73, February of '73, sometime around there?

A I would guess in there.

Q You had been in touch with Mr. Hansen on the subject of the new plant and around that same time, had you not?

A No, sir, I had not. I had never been in touch with Mr. Hansen.

Q Did you get a letter from Mr. Hansen?

A I did.

Q When did you get that letter?

A If you have a copy of it, I can tell you approximately when. I would say shortly after the 19th of January, 1973.

Q Okay.

In that letter, Mr. Hansen stated, "As an overwhelming majority of the employees whom we represent have signified to us their desire to work at the Edison Plant and to continue to be represented by us, we will expect to continue to recognize Local One as the collective bargaining agent of your lithographic employees."

You see that paragraph in that letter, do you not, sir?

A I do.

Q When was the Steel Worker election held?

A I don't have that information.

Q Was it in the month of September, 1973?

A I believe it was.

Q Okay.

Were you consulted with respect to that election at any time?

A By whom?

Q By anyone?

A The only conversation I had personally regarding the election would have been with my GSER, Mr. Ries.

Q Did you come down to the Board at any time in connection with this election?

A No.

Q Did Mr. Ries come down to the Board?

A Not to my knowledge.

Q Who did come down to the Board in connection with the election from American Can, if you know?

A If somebody came down to the Board, it would more than likely have been somebody from our Corporate Employee Relations Department, and I'm not aware of who that would be.

Q Do you know whether or not a Mr. Cooper came down to the Board in connection with the election?

A I do not know personally if he did or not.

Q Do you know whether or not anyone from the American Can Company at any time indicated to the Board prior to the election that Local One had expressed an interest in representing lithographic production employees at the Regency Plant?

A Was I aware of --

Q Do you know whether or not anyone from American Can Company ever told anyone at the Board here prior to the election that Local One had an interest in representing the employees at the Regency Plant?

A No, I do not know that.

Q Okay.

Did you or anyone else, to your knowledge, tell the lithographers who were then employed at the Hudson Plant that there was going to be an election with respect to the Regency Plant?

A Not to my knowledge.

Q Following the election, you entered into a contract with the Steel Workers with respect to the employees at the Regency Plant, is that correct, sir?

A That's correct.

Q Is that a door-to-door contract?

A The terminology --

MR. ZUCKERMAN: Objection, your Honor. I don't know what door-to-door means.

A I don't know what door-to-door means.

I am familiar with wall-to-wall.

Q Is it wall-to-wall?

A In that term, yes.

Q Therefore, intended to cover all production of maintenance employees, is that correct?

A That is correct.

Q And that would include lithographers, is that correct?

A That's correct.

Q Is there a union shop clause in that contract?

A A union shop clause in which contract?

Q In the contract with Regency with the Steel Workers?

A The national contract?

Q Is that the one you have at Regency?

A There is a national contract with the United Steel Workers of America.

Q Covering the employees at Regency?

A It covers all of the employees in American Can Company that are under the national contract.

Q Including those at Regency?

A Including those at Regency.

Q Is there a union shop clause in that contract?

A I'm not familiar with the term "union shop clause."

Q Does an employee who goes to work at the Regency Plant have to join the Steel Workers Union within thirty days?

A That I'm aware of. That is in there.

Q That's correct?

A Yes.

JUDGE JANUS: Much of this has been covered either in the allegations of the complaint, which are undenied, or in exhibits which have been introduced.

I think you are going over a lot of matter that has been covered.

MR. GILL: That's the price I have to pay for not being here yesterday.

JUDGE JANUS: If you want to take a few minutes and talk to Mr. Archer about anything that you want to develop here and learn from him whether it has been covered, all right.

Q When an employee is hired at the Regency Plant --

MR. GILL: Withdrawn.

Q After you entered into the contract with the Steel Workers, is it fair to say that every employee who applied for work at the Regency Plant was advised that he would have to join the Steel Workers Union?

A Yes.

MR. GILL: May I have this marked for identification, please, as Charging Union's Exhibit 1?

(Charging Union's Exhibit 1 was marked for identification.)

Q I show you this document. I ask you if you recognize it.

A I recognize it.

Q What is it, sir?

A This is a subsequent notice that we put on the bulletin boards advising them of an update regarding the closure of Hudson Plant.

MR. GILL: I offer it in evidence.

MR. ZUCKERMAN: May I have a question, your Honor?

JUDGE JANUS: Yes.

VOIR DIRE EXAMINATION

BY MR. ZUCKERMAN:

Q There appears to be on my copy some handwriting at the bottom of that page. I can't read it.

Is it legible on the original?

A Yes. Would you like to see it?

Q Would you read it to us?

A "American Can Company, Jersey City, New Jersey, Delegate Angelo Campione."

Q Is that your handwriting?

A No.

Q It looks like there is some writing in the upper left-hand corner. Is there?

A Yes.

Q Is there?

A Yes.

Q Could you read that, please?

A It looks like "A. Olmstead."

Q Is that your handwriting?

A No.

Q Do you know how that got on that document?

A No.

MR. ZUCKERMAN: Mr. Gill, would you like to tell us?

MR. GILL: I don't know.

MR. ZUCKERMAN: No objection to its admission, your Honor.

MR. GORE: No objection.

JUDGE JANUS: Charging Union's Exhibit 1 is received.

(Chargin Union's Exhibit 1 for identification was

received in evidence.)

MR. GILL: May I have this document marked Charging Union's Exhibit No. 2 for identification?

(Charging Union's Exhibit 2 was marked for identification.)

BY MR. GILL:

Q I show you Exhibit No. 2, and I ask you if you recognize it?

A I do.

Q What is it, sir?

A This, again, is a notice advising the employees of the latest revised best estimate schedule regarding the closure of Hudson Plant.

MR. GILL: I offer it in evidence.

MR. ZUCKERMAN: No objection.

MR. GORE: No objection.

JUDGE JANUS: It may be received.

(Charging Union's Exhibit 2 for identification was received in evidence.)

BY MR. GILL:

Q Is that last sentence, which reads, "Because of this condition I have informed your local union officers that now all manufacturing operations at Hudson Plant will

terminate during the month of December, 1973."

Did you inform a Local One officer with respect to that?

A On each occasion when these notices were put up throughout the plant, we had a practice of bringing the various union officers or presidents or the senior union officer into my office, and we would advise them of the notice going up, and if they had any questions at that time, we wanted to be in a position to answer them.

That was our practice.

Q In Local One's case, you would say that would be Mr. Campione?

A That's correct. If he was there, he was in the meeting.

Q And you then did not meet that December deadline, either, and, as a matter of fact, the lithographic operation is still continuing at the Hudson Plant, is that right, sir?

A That's correct.

Q What is your latest estimate as to --

MR. ZUCKERMAN: Your Honor, he has testified to this twice already. This is the third round on that question.

JUDGE JANUS: Let's get the answer, then.

Q What's the latest estimate as to when you are going to be closed down, to close down the lithographic operation at the Hudson Plant?

A We estimate somewhere around the end of July of this year.

Q Do you know whether or not anyone from American Can Company had any contact with the Steel Workers with respect to representation at the Regency Plant prior to the election which was held in September?

A No.

Q Did you confer with anybody from the Steel Workers Union on that subject at any time?

A No.

Q Did anyone else in your company confer with any representative of the Steel Workers prior to the election?

A Not to my knowledge.

Q Did there come a time when someone at American Company, if you know, decided that it was not necessary to consult with Local One concerning representation at the Regency Plant?

MR. ZUCKERMAN: Objection, your Honor. I don't understand that question.

MR. GILL: You don't have to.

JUDGE JANUS: It's kind of vague. You are asking if there came a time when they decided they didn't have to consult?

MR. GILL: Correct.

JUDGE JANUS: Perhaps if you do it affirmatively.

Was there ever a time when you decided that you had to consult with Local One?

THE WITNESS: No.

Q Did you ever participate in any discussions concerning that subject?

A With who?

Q With anyone?

A Regarding specifically what?

Q Regarding whether or not there was any obligation to Local One with respect to the lithographic employees to be employed at the Regency Plant?

A No, other than my GSER, which would be a plant discussion, but the answer to the question would be No.

Q I want to know about that discussion. What was the discussion with your GSER?

A Give me the question.

Q I want to know whether you ever participated in any discussion with respect to whether or not American Can Company had any obligation to consult with Local One concerning the lithographic production employees to be employed at the Regency Plant.

A No, the answer to that question is No.

Q You did not?

A I did not.

Q You had had a contract with Local One covering lithographers at the Hudson Plant for many years, had you not?

A That's correct.

Q You were well aware of that, were you not?

A Yes.

Q Were you consulted concerning the establishment of the Regency Plant?

A With regard to what?

Q With regard to the establishment of it, the fact that it was going to be established.

A Yes, I was advised.

Q And you knew there was going to be lithographers employed there, is that right?

A That's correct.

Q Did the thought ever occur to you that you might have some problem with Local One concerning representation?

A I had more concern -- there was more besides Local One. There was Steel Workers, Operating Engineers. Yes, I had concern with all unions.

Q You never discussed that question with anybody, is that your testimony?

A There would have been discussions regarding the union situation at Regency in general terms as to what our position would be, at plant level.

Q Yes.

A To that degree --

Q And that included the Local One?

A That would include all local unions.

Q I would like to know more about that discussion, what was said, who was there.

#3 A The discussion would center around the fact that this was a new manufacturing facility, it was not a continuance of an existing Hudson operation.

Therefore, it was American Can Company's position this would be a nonunion operation. that's where it was stopped.

Q Non-Local One operation?

A Nonunion.

Q The lithographers were going to be nonunion, is that what you are saying?

A I'm not saying anything.

Q Is that what was decided at this discussion that you are talking about?

A No. What was decided at that discussion was that we were building a new plant. There was no bargaining unit that was going to represent that plant. It was nonunion. There was no existing local union at Hudson that was going to go down to Regency and represent those workers.

Q The Steel Workers, they were out, too, as far as you were concerned?

A That's correct.

Q And then was there any discussion with the Steel Workers on the subject of Regency prior to the filing of the petition? You said "no" to that?

A Not with me.

Q So that when the petition was filed by the Steel Workers with respect to the Regency Plant, that came as a complete surprise to everyone at American Can Company, is that right, sir?

A I can't speak for the whole company.

Q Were you surprised?

A I don't know. I really didn't give a damn, to be honest with you.

JUDGE JANUS: He probably had an idea that somebody might come from the Steel Workers.

MR. GILL: I suspect he did.

Q Was there ever any discussion about the desirability of having the Steel Workers represent the lithographers instead of Local One?

A No.

Q Would American Can Company prefer to deal with one union rather than two in a particular plant?

A I can't speak for American Can Company in that regard.

If you want to ask me individually, I would say Yes, as a plant manager.

First of all, I would rather not have any. My second choice would be to have one, and so forth.

Q Is it not true that the Steel Workers' wage rates relative to the lithographers are lower than Local One's?

A I'm not that familiar with rates.

MR. GILL: Do you have a copy of the contract?

JUDGE JANUS: I think we know that from other testimony, don't we?

MR. GILL: All right.

MR. GORE: I have introduced my exhibit, a copy of the contract.

JUDGE JANUS: Does that show the wage rates?

We have testimony from the lithographers who testified as to what they were being offered.

MR. GILL: All right.

BY MR. GILL:

Q What Steel Worker official services the Regency Plant?

MR. ZUCKERMAN: Objection, your Honor. I don't see the relevancy.

JUDGE JANUS: What is the relevance?

MR. GILL: I may want to call another witness. I may want to call that individual.

MR. ZUCKERMAN: That's not the way to decide who the witnesses are, your Honor.

MR. GILL: What do I have to do, hire a detective?

MR. ZUCKERMAN: That's your prerogative.

JUDGE JANUS: I'll overrule the objection.

BY MR. GILL:

Q Who is the Steel Worker official that services the

Regency Plant?

A I really don't know.

MR. GORE: If you would like to ask me for a stipulation, I will be happy to do so.

I will stipulate that a gentleman by the name of Steve Cadena, who is a staff representative of the United Steel Workers, services that particular plant.

MR. GILL: That's all.

JUDGE JANUS: Let's take a five-minute break.

(Short recess taken.)

JUDGE JANUS: On the record.

CROSS-EXAMINATION

BY MR. ZUCKERMAN:

Q Mr. Marifjeren, there has been a lot of discussion in the last day and a half about the Hudson Plant and the Regency Plant.

Maybe we ought to tell everybody a little about both plants.

Where was the Hudson Plant located?

A Jersey City, New Jersey.

Q Give us some idea of the size of Hudson. How many sqare feet of floor space did it have?

A In excess of 1,100,000.

Q How many floors did the building comprise?

A Eight.

Q How many buildings were Hudson comprised of?
A There is five connecting buildings, two separate attached buildings, and one detached building.
Q Let's compare that to Regency Plant.
How many square feet of floor space at Regency?
A 263,000.
Q How many floors?
A One.
Q How many buildings?
A One.
Q In terms of production units, when did Hudson reach its peak in production of units?
A In 1964.
Q Approximately how many units would it have produced in '64?
A In excess of 1 billion.
JUDGE JANUS: By units, you mean cans?
MR. ZUCKERMAN: Cans, yes, sir; containers.
THE WITNESS: Containers would be a better work, your Honor.
JUDGE JANUS: Excuse me.
Q How does the industry identify the container produced; is it identified by size or product, how does it do it?
A Both.
Q In 1971, can you give us an idea of what kind of

containers were being produced at Hudson?

A Just about all sizes and styles of metal containers in the industry were produced to one degree or another at Hudson.

For an example, we had various oblong containers used for just about all product lines: insecticides, lighter fluids, anti-freeze, salad oils, and so forth.

We produced coffee containers in all sizes, one pound, two pound, three pound; shortening containers, one pound and three pound; beer containers, carbonated beverage containers, motor oil containers; metal and composite, aerosol containers, drums, convolute, composite, film boxes and in-plant garbage cans.

Q The list of product lines that you just told us about, in 1972, which of those product lines were no longer being produced at Hudson?

A Either completely or all of the carbonated beverage, beer, motor oil, lighter fluids, drums, convolute and composites, and some various plant containers and some other miscellaneous containers.

Q Did the company stop making these products or were some of them transferred to other locations?

A Both.

Q Of those that were sent or produced at different locations, tell us what product line and what location it went to?

A We relocated some of the business -- let's see, carbonated beverage was moved to Morrisville Plant.

The beer business was moved to our Riverside Plant.

Paint containers were moved to our Philadelphia Plant.

Tobacco containers were moved to Baltimore and Englewood plants.

This is 1972?

Q That's correct, sir.

A Drums were moved to Englewood Plant. Various metal -- metal motor oil was moved to La Moin and Fairport Plants.

Composite motor oil was moved to La Moin Plant.

There may have been some other miscellaneous that went elsewhere.

Q Were any product lines discontinued?

A Yes.

Q Can you tell us which lines were discontinued?

A Upper compartment containers, film boxes. There were other miscellaneous small-volume containers that were discontinued.

Q Did any of the products that were either relocated to other plants or discontinued -- did any of them require lithography work?

A Yes.

Q Which ones?

A We had -- by the way, coffee containers went to Hillside.

Coffee and shortening went to Hillside.

Just about all of the volume required lithography.

There would be one product line that required no lithography; that would be shortening containers, and a portion of the paint containers were plain.

The bulk of everything else was lithographic.

Q Did the ALA ever request that any lithographers transfer their job location when this work was transferred?

A No.

Q Did they make any other request with respect to these lithographers when the work was transferred?

A No.

Q As these products were discontinued or transferred, was there a corresponding decrease in the need for litho production employees?

A Yes.

Q Would you give us an idea of how many lithographers, how many lithographers that you may have employed back in 1964 when you were at your peak?

A Approximately 66.

Q Can you give us an idea of how many you employed in '72?

A An average of about 54.

Q What about January of 1973?

A Approximately 44.

Q July of '73?

A Approximately 41.

Q And by September of 1973?

A 37.

Q And by December of '73?

A 26.

Q Did there come a time when a decision was made to close the Hudson Plant? You've testified that decision was in August of 1972?

A That's right.

MR. ZUCKERMAN: May I have this document marked for identification, please?

(Respondent's Exhibit 4 was marked for identification.)

JUDGE JANUS: Mr. Zuckerman, I am sure you are going to cover this, but the thought has just struck me, and I can't resist asking Mr. Marifjeren:

Is the Regency Plant a new plant?

THE WITNESS: It is a new plant in an existing facility.

JUDGE JANUS: Would you explain that?

THE WITNESS: We bought an existing building which had to be to a degree tailored to our method of manufacture, so it is a new manufacturing operation in an existing facility.

JUDGE JANUS: Had it previously been owned by American Can?

THE WITNESS: No.

BY MR. ZUCKERMAN:

Q Mr. Marifjeren, I show you the document marked for identification as Respondent's Exhibit 4. Would you please look at it?

A Yes.

Q What's the date on the letter?

A August 8th, 1972.

Q What is the substance of that letter?

A This is a feedback of the corporate announcement that was made regarding the American Can decision to close some nine can-making facilities and other manufacturing operations.

Q Was that letter distributed to the employees at Hudson?

A That's correct.

MR. ZUCKERMAN: I'll offer that document in evidence.

MR. ARCHER: No objection.

JUDGE JANUS: It is received.

(Respondent's Exhibit 4 for identification was received in evidence.)

Q What product lines were being produced at Hudson during the first half of 1973?

A Shortening, coffee, some motor oil, some soap and detergent, some peanuts and candy, some paint and aerosol.

Q Mr. Marifjeren, you testified earlier that you had interviewed 216 employees, Hudson employees, for jobs at Regency, is that correct?

A 216 were interviewed, correct.

Q How many employees made up the total population of the plant about that time?

A At Regency?

Q No, at Hudson.

A I think we had 16, 18 hundred.

Q Thank you.

MR. ZUCKERMAN: I have no further questions at this time, your Honor.

JUDGE JANUS: There has been some reference made to other American Can plants, apparently in the vicinity of Hillside, I think, was one of them.

THE WITNESS: Hillside is in Hillside, New Jersey.

JUDGE JANUS: How far is that?

THE WITNESS: From where, from Hudson?

JUDGE JANUS: From the old plant.

THE WITNESS: I would guess ten, eleven miles.

JUDGE JANUS: Were any employees transferred from the Jersey City Plant to any of the facilities other than Regency?

THE WITNESS: Yes.

JUDGE JANUS: Employees?

THE WITNESS: Employees, yes.

JUDGE JANUS: Do any of the other plants have lithographic production?

THE WITNESS: Yes.

JUDGE JANUS: Were any lithographic employees transferred to those facilities?

THE WITNESS: From Hudson?

JUDGE JANUS: From Hudson.

THE WITNESS: No.

MR. GILL: May I ask a question while we are waiting?

JUDGE JANUS: Let's wait and see if Mr. Zuckerman is through.

MR. GILL: Fine.

MR. ZUCKERMAN: I have nothing further, your Honor.

JUDGE JANUS: Sir?

MR. GORE: I have nothing.

MR. GILL: I have one question.

Sir, the methods used in lithographic production are basically the same for all types of cans?

THE WITNESS: Generally, yes.

MR. GILL: Thank you.

MR. ARCHER: First of all, before we commence, Mr. Gore, you told me the wage rates for the list of graphic operators are in your exhibit previously submitted.

MR. GORE: I thought they were, but it is not.

MR. ARCHER: I would like that information with respect

hat the wage rates were for lithographic employees in
ober, 1973, and what it is at present, the wage rates
ing for your pressman, what you call your assistant press-
man and your apprentices.

MR. GORE: Are you requesting that of me?

MR. ARCHER: Yes.

MR. GORE: I don't have that information with me. I would imagine I could get it from Pittsburgh. I don't see the relevancy of it, anyway.

JUDGE JANUS: Isn't it sufficient if we stipulate that the range of the rates -- or that they are less than they were under the Local One contract?

MR. ARCHER: I would be happy to.

MR. ZUCKERMAN: You can't make that stipulation, your Honor, because you are calculating wage rates on a different basis.

JUDGE JANUS: I think we ought to get the information. Is there a local contract?

MR. GORE: There is a local supplement, but it's only a very short local document dealing with local problems.

JUDGE JANUS: It gives the wage rates?

MR. ARCHER: Grade ranges. They don't give actual classification breakdown.

MR. GILL: I suggest the contract be put in and let it speak for itself in its entirety.

MR. GORE: I have introduced a copy of the contract. You must understand, I think everybody is either -- well, anyway, ignoring the fact that I made reference to 3.1, this is the master agreement between Steel Workers and American Can Company which covers all of the American Can Company organized by the Steel Workers.

JUDGE JANUS: Mr. Archer is interested in the rate ranges for the lithographic employees at Regency, and I think we ought to have that in the record somewhere.

MR. ARCHER: Without burdening it, the wage rates that are in the exhibit that has been submitted are on the basis of job classifications delineated by numbers rather than classification.

JUDGE JANUS: You can't tell from that --

MR. ARCHER: From a cursory glance, I can. Each personnel office in each plant, I imagine, would have a breakdown of the applicable classification.

JUDGE JANUS: Maybe they are labor grades.

MR. ARCHER: There is no delineation.

JUDGE JANUS: If we knew what labor grades the lithographic production employees had, I suppose we would have a rough idea of what the rates are, an exact idea.

MR. ARCHER: I think, as I recall the testimony, the October, '73, interviews, they were using -- strike that.

JUDGE JANUS: Maybe Mr. Zuckerman can get the information.

MR. ZUCKERMAN: We will attempt to get it for you, your Honor.

JUDGE JANUS: All right.

MR. ARCHER: I have some further questions.

REDIRECT EXAMINATION

BY MR. ARCHER:

Q Mr. Marifjeren, isn't it a fact that almost all of the lithographic production presently being done at Hudson is aerosol work, pressure can work?

A That's correct.

Q And that was also the fact on March 4th, 1974?

A I can't recall what we were running on March 4th, 1974. It would be a fair assumption, but I can't say.

Q It would be a fair assumption that it was almost exclusively aerosol can work?

A The majority would have been, that I can say. I don't know for a fact.

JUDGE JANUS: Is lithographic work on the plate that goes to make the aerosol container any different than lithographic work on beer cans or coffee cans?

THE WITNESS: The process would be the same, your Honor. It might require a little bit more skill in decorating an aerosol container as compared to another particular product line.

JUDGE JANUS: Do you use a different weight or gauge?

THE WITNESS: It would generally require a closer litho tolerance, only because they refer to it as cosmetic quality as compared to a beer can in a tavern.

BY MR. ARCHER:

Q Mr. Marifjeren, other than Regency -- let me ask you -- other than Regency, is there any other plant in New Jersey that does aerosol can work?

A Aerosol can work?

Q Lithographic work on aerosol cans?

A In New Jersey?

Q Right.

A No. An American Can Company plant, no.

Q When you testified as to various employment figures before, how many lithographers did you have on your payroll in Hudson as of March 4th, 1974?

A I don't have --

Q Approximately 25 or 26?

A It would be in that neighborhood. We have an average that we use.

Q And they were all members of the ALA?

A If they were in Hudson Plant, they were.

MR. ARCHER: No further questions.

MR. ZUCKERMAN: I have no further questions at this time.

Most likely I will be calling Mr. Marifjeren as my own

witness, if we get to that time.

JUDGE JANUS: You are excused.

(Witness excused.)

JUDGE JANUS: Do you have anyone else to call?

Off the record.

(Discussion off the record.)

JUDGE JANUS: On the record.

Mr. Archer, do you have a witness?

MR. ARCHER: I call Allen Olmstead.

A L L E N O L M S T E A D , called as a witness, having been first duly sworn by the Administrative Law Judge, testified as follows:

DIRECT EXAMINATION

BY MR. ARCHER:

Q Mr. Olmstead, by whom are you employed?

A Local One, Amalgamated Lithographers of America.

Q What's your job?

A Director of organizing and financial secretary.

MR. ARCHER: I would like to mark for identification General Counsel's Exhibit No. 11-A and B, I believe.

(General Counsel's Exhibit 11-A and 11-B were marked for identification.)

Q Mr. Olmstead, I show you General Counsel Exhibit 11-A and 11-B marked for identification and ask you, can you identify

these?

A I can.

Q What are they? 11-A first.

A The letter is directed to the Regional Director.

Q Is it signed by you?

A And signed by me as Director of Organizing.

Q Is it dated?

A Dated September 20, 1973.

Q 11-B, what is that?

A 11-B is the envelope in which the letter was placed.

Q Could you describe the circumstances by which this letter came about?

A Yes. Sometime in the morning of September the 20th, I received a call from Angelo Campione, the shop delegate, at the Hudson Plant, asking me if I was aware that an election was going to take place the following day at the Edison Plant.

I replied to him, No, I did not know about it, it comes to me as a complete surprise.

Q This is the first information you had?

A This is the first information we received of the election on the 21st.

Following that, I got in touch with our attorneys, and I reached Ben Robinson, explained the situation to him.

He advised me that we should get a letter of protest

into the hands of the Board as soon as we could.

He dictated this letter to my secretary, but it was read back to him, and subsequently I delivered it here to the Board.

Q Do you recall the approximate time you delivered it to the Board?

A I delivered it about 3 o'clock.

Q At that time, did you have any conversation with a Board Agent?

A No, I did not.

Q What did you do with the letter and the envelope?

A The letter was delivered to the receptionist in the outside office here. I asked her to be sure that Mr. Eisenberg received it, there being nobody present outside of her, and at that point I left.

MR. ARCHER: I move the introduction of 11-A and 11-B into evidence.

MR. ZUCKERMAN: No objection.

MR. GORE: No objection.

JUDGE JANUS: They are received.

(General Counsel's Exhbit 11-A and 11-B for identification was received in evidence.)

Q Subsequent to the filing of this letter with the Board,

what, if any, contact did you have with a Board Agent?

A I had no contact with a Board Agent.

The following morning when I got to my office, there was a telephone message from, I believe it was a Mr. or Mrs. Schecter, and she had left a message with my secretary to the effect concerning showing of interest.

At that point, I began to get -- or tried to get in touch with our legal staff.

I wasn't able to reach anybody that entire day.

The following Monday, I was in touch with them, told them what the situation was.

Following that, we filed the charges.

MR. ARCHER: No further questions.

JUDGE JANUS: Mr. Gill?

MR. GILL: No questions, your Honor.

MR. ZUCKERMAN: Did Mr. Olmstead give an affidavit to the Board?

MR. ARCHER: Yes, he did. I reading this over, I don't feel in any way it relates to his testimony.

I know what the rules and regulations are on this. If the Judge would like -- I have no objection to giving it, but I don't feel that it relates at all and would be relevant to any cross-examination.

MR. ZUCKERMAN: The affidavit was given in the course of the investigation.

MR. ARCHER: But the manual says -- the rules and regulations, I believe, say something else.

MR. ZUCKERMAN: What the manual says is one thing.

MR. ARCHER: I have no objection.

JUDGE JANUS: I'll direct that you turn it over. I'll take the responsibility.

MR. ARCHER: That's quite all right.

JUDGE JANUS: We will take a few minutes off the record.

(Discussion off the record.)

JUDGE JANUS: On the record.

MR. ZUCKERMAN: Your Honor, I do not have any questions for Mr. Olmstead.

MR. GORE: I just have a couple.

CROSS-EXAMINATION

BY MR. GORE:

Q Mr. Olmstead, I think you testified that on September 21st, upon reaching your office, you found a message from Miss Schecter pertaining to a showing of interest?

A Correct.

Q I think you also state that you attempted to get in touch with your attorney during the day?

A Yes.

Q Did you, on any time that day, attempt to get in touch with Miss Schecter?

A No, I didn't.

Q Did you attempt to get in touch with anyone at the Regional Office that day?

A No, I did not.

Q Between September 21st and September 28th, the date on which these charges were filed, did you attempt to get in touch with anyone at the Board with respect to the election?

A No.

Q No?

A No.

Q Do you know whether your attorney contacted anyone at the Board with respect to the election?

A I understand that Mr. Gill spoke to the Board.

Q Between the date of the 21st and the date that you filed the charges?

A Right.

JUDGE JANUS: Has Miss Schecter been identified?

MR. ARCHER: It's Mrs. Phyllis Schectman. She is an Examiner in this office.

MR. GORE: Could we stipulate that Mrs. Schectman was the Board Officer who was conducting the election?

MR. ARCHER: I really personally do not know whether she personally conducted the election. I could find out.

MR. GORE: Could we find out whether Mrs. Schectman is the Board Agent that conducted the election on the 21st?

MR. ARCHER: I believe more than one Board Agent conducted the election. I think she was there. I would have to check to make sure.

JUDGE JANUS: Will you make a note to find out?

MR. ARCHER: I'll find out.

MR. GORE: Could we also find out whether Mrs. Schectman was the Board Agent that investigated -- at least, did the investigation work leading up to the election?

MR. ARCHER: Mrs. Schectman was the Board Agent who did.

MR. GORE: Okay. We can stipulate to that?

MR. ARCHER: I see no problem.

JUDGE JANUS: As I get it, there is one person. Is it Schecter or Schectman?

MR. ARCHER: Schectman.

JUDGE JANUS: Any further questions of Mr. Olmstead?

MR. ZUCKERMAN: No, sir.

JUDGE JANUS: Mr. Gill?

MR. GILL: No, your Honor.

MR. ARCHER: None.

JUDGE JANUS: Thank you.

(Witness excused.)

JUDGE JANUS: Off the record.

(Discussion off the record.)

JUDGE JANUS: On the record.

I've decided, for the sake of expediency, that the next witnesses for the General Counsel will be examined by him, and then we will break for lunch; and during the lunch period, Mr. Archer will supply the affidavits of both witnesses to Respondent, and Steel Workers.

When we return from lunch, they will be cross-examined by both parties.

MR. ARCHER: Before we go any further, your Honor, I would like to have you take notice of particular documents and introduce them into evidence.

They are, respectively, a petition filed in Case No. 22-RC-5853 by the United Steel Workers of America, AFL-CIO, to represent all production and maintenance employees, including lithographers, at its Pierson Avenue, Edison, New Jersey, Plant, commonly referred to as Regency Plant.

That would be General Counsel's Exhibit No. 12.

(General Counsel's Exhibit 12 was marked for identification.)

MR. ARCHER: Further, I would like you to take notice and mark for identification as General Counsel's Exhibit 13, a stipulation for certification upon consent agreement executed by the American Can Company and United Steel Workers of America and approved by Arthur Eisenberg on September 10, 1973.

I move that that be introduced in evidence.

(General Counsel's Exhibit 13 was marked for identification.)

MR. ARCHER: Thirdly, as General Counsel's Exhibit 14 marked for identification, a certification of representative United Steel Workers of America, AFL-CIO, as the bargaining representative for all hourly rate production and maintenance employees employed by the employer at its Regency Plant located on Pierson Avenue, Edison, New Jersey, which is dated and signed October 1, 1973.

I move its introduction into evidence.

(General Counsel's Exhibit 14 was marked for identification.)

JUDGE JANUS: General Counsel's Exhibit 12, 13, and 14 are received.

(General Counsel's Exhibits 12, 13 and 14 for identification were received in evidence.)

MR. ZUCKERMAN: I'm sorry, your Honor. For the record, I must make objection to their admission, unless and until all documents contained in that R Case file are either admitted into the record or supplied to Respondent for examination.

JUDGE JANUS: Mr. Gore?

MR. GORE: No objection.

JUDGE JANUS: I'll receive the exhibits over Mr. Zuckerman's objection.

MR. ARCHER: Charles Amorese, please.

C H A R L E S A M O R E S E , called as a witness, having been first duly sworn by the Administrative Law Judge, testified as follows:

DIRECT EXAMINATION

BY MR. ARCHER:

Q Mr. Amorese, by whom are you employed?

A Presently, Continental Can, Paterson.

Q In what job?

A As a press operator.

Q Were you formerly employed by American Can Company at its Hudson Plant?

A Yes, I was.

Q For how long?

A Approximately five and a half years.

Q Until what date?

A September 22nd, 1973.

Q What was your job at the American Can Hudson Plant?

A Press operator or assistant pressman.

Q Do you recall on or about October 12th, 1973, having a conversation with Mr. Larry Marifjeren?

A Yes, I do.

Q Could you describe the circumstances of that conversation?

A Yes, I can.

I was contacted at home by telephone by Mr. Frank Muller stating that Mr. Marifjeren would like to speak with me on the hiring of the Regency Plant.

I went down on a Friday morning, October 12th, to Mr. Marifjeren's office, and I was introduced formally to Mr. Marifjeren and Mr. Ries.

I had known Mr. Muller. On a previous occasion I had spoken to him.

Q He was also present?

A Yes, he was.

Q What was the discussion?

A Mr. Marifjeren tole me the reason I was there, they were hand-picking people for the new plant at Regency, and I was chosen, I guess for my ability, et cetera.

He proceeded to say that as far as he knew, it was the Steel Workers -- the Steel Workers had it sewed up door to door or wall to wall, if you wish, in the new plant of Regency; and then Mr. Ries explained the contract, the Steel Workers contract, and said that I would be working under their contract, and I would be making approximately $5 an hour as an apprentice pressman.

I would be sent to a school in Morrisville, Pennsylvania,

for a training program, and I would just come under the same contract and the same benefits as the Steel Workers had.

Q Were any of those benefits spelled out for you or discussed at that time?

A Well, I would be getting -- within the time I had with the company, I would be getting approximately two weeks' vacation.

Q How many weeks were you getting under the ALA contract?

A At the time of the ALA, I was getting five weeks.

Q Any discussion about holidays at all?

A I believe the holidays were pretty much the same, except maybe for one or two. We had more.

Q You testified that the job they offered you would be $5 an hour?

A That's correct.

Q What were you making at that time?

A $6.59 on the second shift.

Q Was there any discussion about work week at all?

A Yes. I was told I would work a 40-hour work week, and I presently had a 35-hour work week with the ALA.

Q You said there was some discussion about pension benefits, transfer of pension benefits that you had had with the company?

A Yes. They told me that I could retain my five years

seniority and it would apply towards the new pension under the Steel Workers contract.

Q Okay.

Now, were you at that time covered by a company pension plan?

A No, I was not. I was covered by the ALA pension plan.

Q How many years of credit did you have in that plan?

A At that time I had about eleven and a half years.

Q Did they offer to transfer these eleven and a half years of pension credits if you took the job at Regency?

A No, they did not.

Q After Mr. Ries outlined these benefits to you, what, if anything, did you say?

A I said I would like time to think it over and discuss it with my family.

He said to me, "Okay, think it over."

That was on a Friday. He said, "Get back to me" -- Mr. Marifjeren stated, once I made my decision, to call Mr. Ries and let him know my decision, which I did. I called, I guess it was -- I finally got in touch with him about Tuesday or Wednesday of the following week, and I told him that I couldn't accept the proposal unless it would be under the same conditions which I now had with ALA.

What, if anything, was said to you?

A The only thing that Mr. Ries said, "Okay, as long as

you've given it careful thought."

That was it.

Q Since that date, have you been offered or given a job at the Regency Plant?

A No, I have not.

MR. ARCHER: No further questions.

JUDGE JANUS: Mr. Gill, do you have any questions?

MR. GILL: No questions, your Honor.

JUDGE JANOS: You will be recalled after lunch.

(Witness excused.)

MR. ARCHER: Mr. Julian Posnanski.

J U L I A N P O S N A N S K I , called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ARCHER:

Q Mr. Posnanski, by whom are you employed?

A National Can, Morrisville, Pennsylvania.

Q How long have you been employed there?

A December of '73.

Q What job do you have there?

A Journeyman lithographer pressman.

Q Were you formerly employed by American Can at its Hudson Plant?

A Yes.

Q For how long?

A Eleven years.

Q Until what date?

A December, the early part of December.

Q Of 1973?

A '73.

Q In what job were you employed there?

A Journeyman pressman, Amalgamated Lithographers, Local One.

Q You were a member of ALA?

A I was.

Q Mr. Posnanski, do you recall on or about October 12th, 1973, having a conversation with Mr. Larry Marifjeren?

A Yes.

Q Would you describe the circumstances?

A I was called to his offices.

Q By whom?

A By Mr. Marifjeren.

Q Who else was present there?

A Al Ries, Frank Muller, partial.

Q Could you describe the conversation?

A He had the records in front of him and told all of us about the records and the plant over in Regency, offering me a job.

Q He offered you a job?

A - As a pressman.

Q What else did he say?

A Also he offered me the eleven years' service I had in Jersey City credited towards the new plant. Also the seniority.

Q Was there any discussion about what your wage rate would be?

A Yes. The wage rate was $6.40 an hour.

Q Any other discussion about fringe benefits?

A Well, I never did follow it through.

Q During that conversation with Mr. Marifjeren, Mr. Ries and Mr. Muller, other than what you've testified to already, was there any further discussion about fringe benefits?

A That I would have to go under the Steel Workers Union.

Q You testified they offered you a job at $6.40 an hour. What were you presently making?

A Close to $9.

Q Pardon me?

A Close to $9.

Q $9.

With respect to your pension credits at that time were you covered under a company pension plan?

A No, sir.

Q What type of plan were you covered by?

A A union pension.

Q How many years of pension credits did you have?

A Twenty-four years.

Q Did they offer to transfer those twenty-four years of pension credits to Regency?

A No, sir.

Q Was there any discussion about vacation at all?

A Two or three weeks.

Q What do you mean by that?

A That's what I was offered, two or three weeks, three weeks.

Q At that time, how many weeks of vacation were you getting under the ALA contract?

A Five.

Q What did you say to their offer?

A I would let them know.

Q Did you let them know?

A Yes, sir.

Q When?

A It was a Friday we had -- it was on a Tuesday morning.

Q Who did you talk to?

A The four of us present.

Q Who was that?

A Eddie Lemke, Bobby Rozzadi, George Gropi, and I.

Q What did you do?

A We all agreed we would just go on the conditions of the ALA.

Q Did you communicate that to any company official?
A No, sir.
Q Did you tell anybody at the company that you had agreed to that?
A Just among ourselves.
Q Did you advise the company of that decision?
A Yes, we did.
Q Who did you advise?
A The personnel manager's office.
Q The four of you went into the personnel manager's office?
A All at one time.
Q What was said there?
A That we would go on the conditions if we had the ALA.
Q Did you receive any response to that?
A No.
Q In fact, you've since left American Can?
A I have.

MR. ARCHER: No further questions.

JUDGE JANUS: Mr. Gill?

MR. GILL: You are working at American Can now, sir?

THE WITNESS: Yes.

MR. GILL: Under a Local One contract?

THE WITNESS: Local One contract.

MR. GILL: Nothing else, your Honor.

JUDGE JANUS: Thank you. You will be here after lunch?

THE WITNESS: Yes, sir.

(Witness excused.)

JUDGE JANUS: We will take a lunch recess until 1:20.

(Whereupon, at 12:00 o'clock p.m., a luncheon recess was taken.)

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AFTERNOON SESSION

(1:20 p.m.)

JUDGE JANUS: On the record.

I think Mr. Amorese was first.

I will recall him for cross-examination now.

C H A R L E S A M O R E S E , recalled as a witness, resumed the witness stand and testified further as follows:

MR. ARCHER: Your Honor, there are one or two points that you have asked me about before, I believe, in off-the-record discussion.

First of all, Patrick Daly and Phyllis Schectman ran the election at American Can in 22-RC-5853 on September 21, 1973, and I would at this time like to offer into evidence a copy of the subpoena, the motion by the National Labor Relations Board to revoke the subpoena, as well as the memorandum in support thereof, and add those to the formal exhibits.

JUDGE JANUS: You are adding it to Exhibit 1?

MR. ARCHER: Yes.

Would you like me to clarify the record?

JUDGE JANUS: Yes.

MR. ARCHER: Your Honor, as you recall yesterday, we had added certain other exhibits to the formal exhibits, that being Exhibit 1, as 1-M, the notice to show cause issued

by the Regional Director on March 26th, 1974; as Exhibit 1-N, the response of the United Steel Workers of America, AFL-CIO, to that notice to show cause; and as 1-O, the response of the American Can Company to that notice to show cause.

At this time, I would like the copy of the subpoena served on the Regional Director, Arthur Eisenberg, to be designated as Exhibit 1-P; the motion of the National Labor Relations Board to revoke the subpoena duces tecum as 1-Q, and the memorandum in support of the petition to revoke the subpoena duces tecum as 1-R.

JUDGE JANUS: Is there any objection?

MR. GORE: No objection.

MR. ZUCKERMAN: No objection.

JUDGE JANUS: I'll receive the exhibits.

(General Counsel's Exhibits P, Q and R were received in evidence.)

CROSS-EXAMINATION

BY MR. ZUCKERMAN:

Q Mr. Amorese, what was your job at American Can Company?

A Press operator was the title. My specific job of -- as to what I did, is that what you mean?

Q Let me rephrase the questions, sir.

Were you a journeyman lithographer?

A I was a journeyman press operator.

Q Press operator?

A That's correct.

Q What position were you offered at Regency?

A I was offered an apprentice pressman's job.

Q And that would have been in effect training you for a higher position?

A That's correct.

Q A more skilled position?

A That's correct.

Q At the time they offered you this position, you were pretty excited about it, weren't you?

A Well, sure. It's an opportunity to advance yourself, if that's what you mean.

Q You indicated to Mr. Marifjeren or Mr. Ries or maybe both of them that you would really seriously consider taking that job, didn't you?

A That's right, I would consider it.

Q This occurred on what day?

A On Friday, October 12th, 1973.

Q During the intervening week end, did you speak to anyone about whether or not you should take that job?

A My wife and family.

Q Did you speak to anybody else?

A Well, I had contacted -- not during the week end, but I

told Mr. Olmstead of my position and that I was offered this job by the American Can Company.

Q When did you tell Mr. Olmstead?

A I believe --

Q Friday, Saturday, Sunday, Monday?

A I believe it was Monday.

Q Did you call him, or did you see him face to face?

A No. I spoke to him face to face, because I was laid off at the time.

Q What did you say to Mr. Olmstead?

A I just told him that I was offered this position with the American Can Company and that they gave me time to think it over, and by this time I had, I guess, had a day or so, or two days to think it over.

Q You said you were on layoff status at that time?

A Yes.

Q Were you working any other place?

A No.

Q You were out of work at that point?

A Yes.

Q What did Mr. Olmstead say?

A What could he say? If I wanted to leave ALA, I could have. He couldn't say anything, really, as far as that's concerned.

Q I would like you to think. I would like you to think

carefully about your conversation with Mr. Olmstead and what his reply to you was when you had told him you had been offered this job.

A First of all, he said it was my decision, and he asked me what I thought of it, and at the time I guess I had a day or two to think about it, and already my thoughts were that, although it was being updated as far as position is concerned, I was going backward as far as paywise and benefits.

So he told me that if my decision was yes or no as to whether I would take it, and at the time I said I didn't think I would.

Q Where did you speak to Mr. Olmstead?

A In his office.

Q You went down to him?

A That's correct. I was laid off at the time, and I had to go down on some other matter, a medical, and I went downstairs, and I spoke to him about it.

Q He didn't call you and ask you to come down and talk to you about the job?

A Not that day, no.

I went down on my own accord.

Q Didn't Mr. Olmstead tell you not to take that job?

A No, he didn't.

Q In August of 1972, Mr. Amorese, did you attend any

meetings at the company in which you were told that the plant would be closed?

A I didn't personally attend because I was on vacation at the time, but the rest of the plant, the lithographers and the Steel Workers, of course, were summoned to a meeting by Mr. Woods, I believe it was, and Mr. Marifjeren, announcing the phasing out or the closing of the Hudson Plant.

I heard it through the news media, unfortunately. I was on vacation.

MR. ZUCKERMAN: I have no further questions.

CROSS-EXAMINATION

BY MR. GORE:

Q Mr. Amorese, with respect to the October 12th meeting, did anyone indicate to you that there had been an NLRB election at the Regency Plant?

A Would you say that again, please?

Q Did anyone indicate to you that there had been an NLRB election at the Regency Plant?

A Mr. Marifjeren had stated the day that I spoke to him that as far as he knew, according to the National Labor Relations Board, the Steel Workers had it sewed up wall to wall or door to door, or whatever. I'm not going to quote the exact words, but it was something to that effect.

MR. GORE: I have nothing further.

MR. ZUCKERMAN: I'm sorry, your Honor, I do have one

more question I forgot to ask.

MR. ARCHER: May I?

MR. ZUCKERMAN: I would like one more.

JUDGE JANUS: Go ahead.

CROSS-EXAMINATION (CONTINUED)

BY MR. ZUCKERMAN:

Q Mr. Amorese, I show you Respondent's Exhibit No. 2 in evidence, and I am specifically showing you the 7th page of that document.

Will you please look at it?

Can you identify that document, sir?

A Yes.

I signed it.

Q Do you find your name on that page?

A I do.

Q Would you tell us how far down the list your name is?

A The ninth down on the list, about the ninth line.

Q Is your clock number next to your name?

A Yes.

Q Next to your clock number, is that your signature?

A Yes.

Q Did you date it at the time you signed it?

A That's correct.

Q What is the date?

A 12/20/72.

MR. ZUCKERMAN: No further questions.

REDIRECT EXAMINATION

BY MR. ARCHER:

Q Mr. Amorese, do you recall signing a piece of paper that Mr. Campione gave you?

A Yes, I do.

Q Do you recall when you signed it, approximately?

A January of '73, I guess, in that time.

Q Was that after you had this other document?

A. I believe -- yes, it would be.

JUDGE JANUS: The point has been made and remade.

MR. ARCHER: I think so, too, but why not make a clear record?

Q Mr. Amorese, when you went down to visit Mr. Olmstead, did you go specifically for the purpose to discuss your job offer with him or rather --

A I had some other business to attend to, but while I was there, I did two things at once.

Q But your primary purpose was for this other business?

A That's correct.

MR. ARCHER: No further questions.

JUDGE JANUS: Thank you.

(Witness excused.)

JUDGE JANUS: Mr. Posnanski.

J U L I A N P O S N A N S K I , recalled as a witness,

resumed the stand and testified further as follows:

CROSS-EXAMINATION

BY MR. ZUCKERMAN:

Q Sir, after you were offered a job at the Regency Plant, did you have any discussions with anyone outside of your family about your job?

A The four of us.

Q Who did you discuss it with?

A Edward Lemky, Bob Rozzadi, George Gropi.

Q Did you discuss it with anybody else?

A Yes, with the delegate.

Q Who is the delegate?

A Campione.

Q Tell us about your discussion with the delegate.

A We come to the conclusion what we were going to do.

Q What did you say to your delegate?

A What they offered us.

Q What else?

A That was all.

Q What did he say to you?

A It was left to us.

Q Try to search your memory and tell me as close as you can remember what Mr. Campione said to you.

A That the four of us -- five of us are together?

Q If you were talking to him alone. I don't care, either

time.

A We would give him an answer.

Q That you would give him an answer?

A Yes.

Q What was the answer?

A We would go on the ALA, Amalgamated Lithographers.

Q That answer was suggested to you by Mr. Campione?

MR. ARCHER: Objection. That's not what he has testified to.

JUDGE JANUS: That's cross-examination. I'll permit it. Do you remember the question?

Was the answer suggested to you by Mr. Campione?

THE WITNESS: Yes.

MR. ZUCKERMAN: I have no further questions.

MR. ARCHER: I have a question.

JUDGE JANUS: Let's see if Mr. Gore has any.

CROSS-EXAMINATION

BY MR. GORE:

Q Mr. Posnanski, referring you to the October 12th meeting, was there any discussion with you by any company official to the effect that there had been an NLRB election at the Regency Plant?

A Not to my knowledge, no.

Q Were you told by any company official that the Steel Workers represented the employees at the Regency Plant?

A Mr. Marifjeren told me that.

Q You stated that you had twenty-four years of pension credits with the ALA?

A Yes.

Q Am I correct in assuming that eleven of those years were accumulated at American Can?

A Yes.

Q And the other at some other employer, with some other company the remaining years were accumulated?

A I have twenty-four years with the union.

Q You were with American Can for eleven years, is that correct?

A That's one plant.

Q Were you at another American Can plant prior to that?

A Yes, Hillside.

Q How long were you employed at Hillside?

A Eight years.

Q Prior to that, were you employed at another American Can plant?

A Not under the ALA. Hoboken.

Q Were you in another American Can plant prior to that?

A Hoboken.

Q Who represented the --

A Steel Workers.

Q Who represented the lithographers?

A Local One, Amalgamated Lithographers, Local One.

Q You were there for five years at Hoboken?

A No, I wasn't there five -- five weeks.

Q My point is: You have twenty-four years of pension credits with the ALA. How many of those years did you accumulate at an American Can plant?

A Under the ALA?

JUDGE JANUS: How many years?

THE WITNESS: Under the ALA?

JUDGE JANUS: How many years were you under the ALA at American Can?

THE WITNESS: Close to twenty years.

Q Then, the remaining four years was at some other company, is that correct?

A Yes.

MR. GORE: I have nothing further.

MR. ARCHER: I would like to clarify one thing.

REDIRECT EXAMINATION

BY MR. ARCHER:

Q Mr. Posnanski, whenyyou met with Mr. Campione, are you saying that he told you to go in and tell them that you would only work at Edison under the ALA?

A That was an agreement between ourselves, Eddie Lemke, Bobby Rozzadi, George Gropi and I.

Q You had already discussed this and made a decision

amongst yourselves?

A We made the decision before.

Q And let me clarify something.

As I understand, you just testified that -- Mr. Zuckerman asked you a question, and you answered something to the effect, yes, to the question that Mr. Campione suggested that you go in and tell them not to -- go in and tell the company that you did not want to work under the ALA.

A Not that way.

Q Did you misunderstand Mr. Zuckerman's question?

A Yes.

Q You had made up your mind already before you talked to Mr. Campione?

A Yes.

Q Why, in your personal case?

A Personal reasons.

Q Those being, if I might ask?

A Pardon?

Q What reasons were there, what --

A Not with that kind of money and going to another union.

Q One last question: When Mr. Marifjeren talked to you, do you recall how many years of pension credits he offered to transfer to the Regency Plant?

A Eleven years.

MR. ARCHER: No further questions.

JUDGE JANUS: When you and Gropi and Lemke and the others were considering this offer of the Company, was Mr. Campione in with you at that time?

THE WITNESS: No, he wasn't.

JUDGE JANUS: Then, as I understand it, you came to a conclusion about not accepting the offer under those terms.

And then did you go in to see Mr. Campione?

THE WITNESS: We had talked prior to that.

JUDGE JANUS: Pardon?

THE WITNESS: It was prior to when we met Mr. Angelo Campione. We had already had made our minds up.

JUDGE JANUS: And then what happened?

THE WITNESS: When the time come to let the personnel manager know what was our answer, all four of us went down and gave him our answer.

JUDGE JANUS: When did you talk to Mr. Campione, then?

THE WITNESS: After I was interviewed by Mr. Marifjeren.

JUDGE JANUS: What did Mr. Campione tell you?

THE WITNESS: I told him.

JUDGE JANUS: Did he tell you anything?

THE WITNESS: No.

JUDGE JANUS: Mr. Zuckerman?

MR. GORE: I have a question.

BY MR. GORE: Did the group of you go in and talk to Mr. Campione?

A Individually.

Q And Mr. Campione agreed with your decision?

A Did he agree?

Q Yes.

A The matter was left up to me, individually.

Q He didn't agree with your decision, though?

A No.

Q Just for the sake of --

MR. ARCHER: Could he ask that question again? I think he misunderstood.

Q He did not agree with your decision?

A At the time, yes, yes.

MR. ARCHER: Yes, he what?

THE WITNESS: He agreed with what we were going to go through with.

Q Did you inform him that the four of you had made up your mind not to accept this offer from the company?

A The four of us went down and gave him our answer, the four of us.

MR. ARCHER: Just to clarify it:

BY MR. ARCHER:

Q The four of you had already made up your minds before you spoke to Mr. Campione, didn't you?

A Yes.

MR. ARCHER: Thank you.

MR. ZUCKERMAN: No further questions.

JUDGE JANUS: I think that's all. Thank you very much.

(Witness excused.)

JUDGE JANUS: Mr. Archer, do you have anything further?

MR. ARCHER: I had made a request for certain wage rates.

MR. ZUCKERMAN: We failed to get together over the lunch hour, your Honor.

MR. ARCHER: We can go forward with the case and introduce them later.

I have nothing further, your Honor, outside of making a motion merely to conform my pleadings to the proof that has been adduced so far.

JUDGE JANUS: Mr. Zuckerman doesn't know what the pleadings are.

MR. ZUCKERMAN: That's precisely right. I would like to know what you are conforming to.

JUDGE JANUS: I don't think that motion needs any answer on my part now. I mean, the proof is in, and the allegation is there for everyone to read, and I'll do the best I can.

Does that conclude your case, then?

MR. ARCHER: Yes, your Honor.

MR. ZUCKERMAN: Your Honor, at this time I would like to make a motion.

JUDGE JANUS: Do you want to conform, too?

MR. ZUCKERMAN: It might not be a bad idea. We might all be out of here in about five minutes.

Your Honor, I think I must at this time make two motions:

First, I would move for summary judgment on the entire complaint.

I would move further that the Notice to Show Cause be struck and quashed.

We have listened to about a day's worth of testimony, all of which doesn't add up to any violation by anybody.

We've heard five people testify that they were told that they had to conform to a union security clause that was negotiated into a contract after the certification by the National Labor Relations Board.

I cannot believe that that constitutes an (8)(a)(2) violation.

If that does constitute an (8)(a)(2) violation of any kind, then, I suggest that we have forty years of Board case law that goes out of the window.

With respect to the (8)(a)(5) violation, again, your Honor, there is no evidence on the record that shows that kind of a violation.

I move, your Honor, that summary judgment be granted on the complaint in its entirety.

I also move, your Honor -- I reassert my prior motion that, in the alternative, at least the violation of (8)(a)(5)

be struck from the complaint, and for the same reasons that I have previously raised to you at the start of this trial.

JUDGE JANUS: Mr. Gore?

MR. GORE: Before you rule, I guess I should get my motion in, also, and I think that goes to the Notice to Show Cause, and I would join with Respondent in moving that the Judge quash the Notice to Show Cause.

Again, I don't think there is any evidence that has been presented here to show any irregularities in the certification of the Steel Workers in the case in question.

JUDGE JANUS: Well, there is really very little dispute as to the evidence.

I think the real issue here is the legal effect of what was done, and I'm not prepared to dismiss the General Counsel's case at this time.

I think it is a close case, and I might say, a very weak case, but I don't think I ought to, after the efforts put in by all the parties, dismiss this case from the bench.

That may not strike you as a very good reason.

MR. ZUCKERMAN: I presume the case is mine at this point.

JUDGE JANUS: Yes.

MR. ZUCKERMAN: I call Mr. Marifjeren to the stand.

L A R R Y M A R I F J E R E N , recalled as a witness, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ZUCKERMAN:

Q Mr. Marifjeren, would you give us some general idea of what kind of manufacturing equipment was at the Hudson Plant?

A Manufacturing equipment at Hudson Plant?

Q Yes, sir.

A At one time that was the largest single can-making facility in the world.

Q Tell us the types of equipment that you had.

A We had a complete litho and coating operation, a complete end manufacturing operation.

We had in excess of forty automatic can manufacturing lines, numerous miscellaneous hand-operated lines with all of the associated packing to accommodate that equipment.

THE WITNESS: It's monumental, sir.

JUDGE JANUS: Just for my own edification, the cans are put into the circular shape with a bottom on it, as I imagine, and then shipped out to the canner or something, who puts the stuff in?

THE WITNESS: Well, it all starts with what we call sheeted plate. Sheeted plate is then either coated and/or decorated or can remain plain, depending upon the product line.

The sheet is then slit into can heights and diameters.

At that point, we call it a can body. That body is fed into a machine referred to as a body maker.

This forms a can cylinder which is then soldered.

There are other types of side-seam construction. This can body, then, through automated equipment, a bottom or a top is seamed on.

46 And, at that point, that particular type of container would be sent to a customer and he would fill it and seam on either the top or the bottom, whichever way he wanted it.

That would be a real cheap explanation of how you make a can, sir.

Q Mr. Marifjeren, you earlier testified that some presses, litho presses went from Hudson to Regency, is that correct?

A That's correct.

Q Did any equipment go into Regency that came from plants other than Hudson?

A Yes.

Q Would you give us an idea of that kind of equipment?

A Two complete can lines were made up from various other plants in American Can Company.

Along with those two can lines, two automatic palletizers from other plants in American Can Company.

Two sheet coaters came from other Can Company plants.

You are interested in the plant or just where they come from?

Q I would like to know what equipment was put into Regency that came from plants other than Hudson.

A Just other than.

Two sheet coaters come from other American Can Company plants.

That, basically, is it.

Q Would you explain and clarify for the record what makes up a can line?

A A can line is made up primarily of an automatic slitter, automatic body maker, side seamer, double seamer, testers, end-line conveying systems, and controls and related packing equipment.

Q Was any brand new equipment purchased for Regency?

A Yes.

Q Would you tell us what equipment was purchased?

A All of the end-line conveying systems and controls are new. All in-plant cable conveying systems are new.

An automated transfer car system of handling bulk palletized units is brand new. Two new can line body makers of another method of manufacturing is new.

Q What is that new method of manufacturing called?

A This is called sudronic, welding the side seams. This is a process of welding the side seam as compared to soldering the side seam.

We also have a UV litho curing installation that is

brand new.

Q What does UV stand for?

A Ultraviolet. That is --

Q Is that all you can recall?

A That's all I can recall at this time.

Q Now, at the time the petition for representation was filed, how many job titles or classifications were contemplated for Regency Plant?

A Twenty-six.

Q How many job titles and classifications were then filled?

A Sixteen.

Q How many employees was it projected you would have ultimately in Regency, approximately?

A 255.

Q How many employees do you now have at Regency?

A 204 or -6.

Q Do you know if lithographic production employees are employed at company locations -- at other American Can locations?

A Yes.

Q Are they so employed?

A Yes.

Q Now, if you can give us a recap of what and where those locations are, and, if you know, what union represents them.

A In the United States?

Q Yes, sir.

A Thank you.

MR. ARCHER: May I make a small suggestion?

Rather than go through the testimony, unless Mr. Marifjeren is aware of every one, I understand there are some documents floating around, one of which we received at one time, that has a listing of those in there.

Since it is going to be adduced by testimony, rather than have his memory pressed, I would agree upon a stipulation.

JUDGE JANUS: It sounds like a good idea.

MR. ARCHER: Maybe we can take a few minutes and just look at it.

Off the record.

(Discussion off the record.)

JUDGE JANUS: On the record.

MR. ZUCKERMAN: American Can plants at the following locations employing lithographic production employees are represented by the United Steel Workers of America:

Morrisville, Pennsylvania; Oakland, California; Tampa, Florida; Indianapolis, Indiana; Austin, Indiana; Hammond, Indiana; Puerto Rico and Los Angeles.

The following American Can plants employing lithographic production employees who are represented by ALA Local One:

Hillside, Hoboken and Hudson, New Jersey.

The following American Can locations employing lithographic production employees represented by the Graphic Arts International Union; New Orleans, Housten; Kansas City, Missouri; Seattle, Washington; Saint Paul, Minnesota; Saint Louis, Missouri; and Milwaukee; Englewood; and Baltimore.

The following American Can locations employing lithographic production employees represented by IAM: Atlanta, Georgia; Fairport, Massachusetts; Needham, Massachusetts -- I'm sorry -- Fairport, New York. I'm sorry.

The following American Can Company locations employing lithographic production employees which is not unionized: Philadelphia, Pennsylvania.

JUDGE JANUS: What about Regency?

MR. ZUCKERMAN: You are right.

MR. GORE: My list includes Regency.

MR. ZUCKERMAN: We include Regency, you are correct.

And, the Steel Workers represent lithographic employees at Regency Plant located in Edison Township, New Jersey.

JUDGE JANUS: Off the record.

(Discussion off the record.)

JUDGE JANUS: On the record.

BY MR. ZUCKERMAN:

Q Mr. Marifjeren, can you tell us of any lithographic equipment which was located at Hudson that was sent to any

location other than Regency?

A We have one press that is going to be shipped to our plant in Hillside, New Jersey.

We have another press that is going to be shipped to our plant in Englewood, Illinois.

We have an oven that is going to be dismantled and shipped to our plant in New Orleans.

We have another oven that is tentatively earmarked for one of our international operations.

Q Was there any litho equipment that ended up being scrapped?

A Yes.

Q Can you give us some idea as to what?

A As to how much?

Q Yes.

A Approximately three press lines.

Q Press lines were scrapped?

A Yes. There is going to be more scrapped in the relatively near future.

Q Earlier, I believe this morning, you testified that some work which was performed at Hudson is now being done in Hillside; is that correct?

A That's correct.

Q And can you give us some idea as to how much business was transferred over to Hillside?

A In volume?

Q In volume.

A Approximately fourteen million dollars' worth.

Q This work that went to Hillside, did it require lithography work?

A Yes.

Q To perform this lithography work, did Hillside require any new lithographic employees?

A Yes.

Q How many would they have required?

A Thirteen.

Q Do you know how they got these employees?

A Through the ALA union hall.

Q Did the ALA ever request that lithographers at Hudson transfer to Hillside?

A No.

Q Mr. Marifjeren, would you tell us what kind of supervisory structure you had at Hudson for lithography?

A We had -- there is two functions that go together, litho and coating.

At Hudson, we had two departments, a coating department staffed with a department supervisor of coating, with supporting supervisors; litho department staffed with a department supervisor, litho, and supporting supervisors, that is, shift supervisors, and managing both departments would come

under the direction of a control supervisor.

Q Could you compare that to what your setup is at Regency?

A At Regency, we have a coating and litho operation, one supervisor in charge of that operation, a shift supervisor, and a foreman of litho.

Q At Hudson, did a pressman perform any job other than work on his press?

A No.

Q Is that true at Regency?

A No.

Q What happens at Regency?

A Besides the basic functions of operating a press, a litho pressman at Regency will make minor repairs when necessary, such as replacing nuts, bolts, screws, so forth, replace and repair in-feed conveying belts if required, replace and straighten wickets in the oven if required, and if a press goes down for any reason and there is no alternate unit for that man to go to, he will then be assigned to any constructive work within the plant operation.

Q Mr. Marifjeren, just one last question:

If you can recall, how many job classifications did you have at Hudson?

A In excess of 600.

Q In excess of 600.

And how many job classifications were planned for

Regency?

A Twenty-six.

MR. ZUCKERMAN: I have no further questions for Mr. Marifjeren.

MR. GORE: I have no questions.

CROSS-EXAMINATION

BY MR. ARCHER:

Q Mr. Marifjeren, is it my understanding from your testimony, direct testimony, that at the time that the petition was filed by the Steel Workers to represent the employees at the Regency Plant, there were sixteen job titles filled out of a contemplated twenty-six job titles?

A That's correct.

Q Okay.

And at that time, how many employees were employed at the time of the filing of the petition, how many employees were there at Regency?

A I can't recall that number. Total employees? I can't recall that.

Q Eighty, ninety? Who would have that information?

A I believe Mr. Ries, our GSER, would have that.

Q And you had a projected amount of employees of what?

A At maximum operations at the time that projection was made, approximately 250, 255, thereabouts.

Q Are you aware whether the Board Agent that investigated

the petition was told of these figures?

A I have no way of knowing.

Q Who would know that?

A I don't know. I didn't talk to the Board Agent.

Q When was the work transferred to Hillside from Hudson?

A There wasn't a specific date. This transition of business took quite some time, because it involved relocation of some equipment.

Q I would assume this is along the same type situation that occurred that you testified to at Regency?

A That's correct.

Q It requires a relocation of some equipment?

A A considerable amount of equipment.

Q This being the lithographic presses that you testified to?

A The lithographic press has not been relocated as yet.

Q It will be, though?

A It will be.

Q There are two lithographic presses, aren't there, that are still to relocated?

A No. Actually, to be relocated, there is four. There is two that are being relocated to other than Regency.

Q Now, as I understand it, you did ship two complete can lines of approximately eighteen pieces from Hudson to Regency, didn't you?

A That would be right.

Q Okay.

And I further understand -- I want to clarify a few things since we've spoken about a lot of figures before -- that the projected date for phasing out of Hudson is about the same time -- the Hudson lithographic operation -- is about the same time as the Regency operation will be at full production?

A Not necessarily.

Q One is dependent upon the other?

A To a degree.

Q What type of degree?

A It would be contingent on our start-up of our third press line and the status of the fourth press line.

Q You receive lithographic work from Hudson at Edison, and that does not meet your inspection levels; what happens to that work, it's shipped back to Hudson, isn't it?

MR. ZUCKERMAN: Objection, your Honor.

Let him answer the question.

A I can do anything I want with it.

Q What is the practice?

A I have done both. I can either rework it at Regency, I can scrap it at Regency, I can send it back to Hudson and rework it.

It is my decision to make, and it is based on economics.

Q Doesn't it require a lot of waste and such to continue to do lithographic work at Hudson for Regency?

A It is more expensive to buy lithographic work at Regency from anywhere other than Regency.

Q That doesn't answer my question.

A Restate your question, please.

Q My question is: Isn't it expensive to continue to do your lithographic work at Hudson for the Regency Plant?

A Yes.

MR. ZUCKERMAN: Objection, your Honor. I don't see the relevance.

JUDGE JANUS: Isn't that a business judgment of the company?

MR. ARCHER: I will withdraw the question.

JUDGE JANUS: Maybe they don't know how to run their business. (Laughter)

MR. ARCHER: You have me speechless on that one.

Q Are all your lithographic functions or operations located in one section of the plant? I know the plant at -- basically all the lithographic presses are in one area, aren't they?

A Yes.

Q Do any employees other than pressmen perform pressmen's work on those lithographic machines?

A Where?

Q At Regency.

A Yes.

Q You can take a production man off the floor, and he can operate the press?

A I can upgrade -- I can have an assistant pressman run the press.

Q We've used the terminology throughout of pressman and assistant pressman as being lithographic production employees without making the determination as to appropriate unit, but as a craft.

Can you take a man off the floor in the end manufacturing section and put him on that press as a pressman?

A No.

Q Are you utilizing all your litho pressmen and assistant pressmen now in lithographic functions?

Are they doing other jobs besides that, other than those you've testified to?

A At Regency?

Q Yes.

A Yes, they are doing other functions.

Q Then, the reason for that, as I understand it, is that you haven't put all presses in yet.

A There is installation work that is going on which they are utilized at. There are other functions they are doing to a degree relating to the start-up and try-out

besides operations of the litho and coating.

Q These other jobs that you testified to that, say, a pressman performs, what percentage of his time does he take performing them?

A We don't have that much practical experience in the new plant at this time to answer a question like that in that we have not been what we call in full commercial operation.

Q Perhaps I can clarify it a little bit.

In lithographic operation, as I understand it, that press is continuously running, except when you change plates, isn't that so?

A No.

Q Not necessarily?

A Your definition of changing plates -- I think you have to come back and talk about preparation versus actual running time.

No, I would say that the press is in operation 40 per cent of the time, and in a state of preparation 60 per cent of the time.

Q Okay.

Other than Regency and Hudson, what other American Can plants, say, within two or three hundred miles of those plants, perform on a regular basis lithographic production on aerosol cans?

A Regular production?

Q Outside of emergency run or something of that sort.

A And you are using a 200-mile radius?

Q Say, 200 miles for argument's sake.

A I'm not familiar with this particular area, so my geography is not that good. I would say our Fairport plant and Needham plant.

Q You said Mr. Ries handles personnel matters?

A Mr. Ries is our general supervisor of employee relations. He handles all of the functions in that area.

Q And he is the gentleman -- when Mr. Gill was asking you before about certain documents that you had received from the ALA, either Mr. Campione or Mr. Hansen, they were turned over to Mr. Ries?

A I turned them over to Mr. Ries.

MR. ARCHER: I have no further questions.

MR. ZUCKERMAN: I have nothing further, your Honor.

MR. GORE: Nothing further.

JUDGE JANUS: Thank you very much.

(Witness excused.)

MR. ZUCKERMAN: I call Mr. Ries to the stand.

H E N R Y A . R I E S , called as a witness, having been first duly sworn by the Administrative Law Judge, testified as follows:

DIRECT EXAMINATION

BY MR. ZUCKERMAN:

Q Mr. Ries, by whom are you employed?

A American Can Company.

Q What is your position?

A General supervisor of employee relations.

Q How long have you been employed by American Can?

A Thirteen years.

Q What factory are you located at?

A At the Regency Plant in Edison Township.

Q Were you ever located at the Hudson Plant?

A Yes.

Q What was your job function there?

A The same, general supervisor, employee relations.

Q Mr. Ries, do you recall the NLRB conducted its election at the Regency Plant?

A Yes.

Q What month was that and year?

A September, 1973.

Q Are you familiar with the gentleman named Mr. Campione?

A Yes.

Q Who is he?

A He is the main union official representing the ALA, Local One, at the Hudson Plant.

Q Now, did you have any conversations with Mr. Campione about the NLRB -conducted election, but such conversation

occurring before the election took place?

A Yes.

Q Now, will you tell us about that conversation?

A Well, about a week or six days before the election, I happened to be at Hudson Plant the whole day that day.

My normal thing was to go into Hudson at that time for about two hours in the morning to see how everything was and then shoot down to Regency.

But this particular day, as I say, six, seven days before the election, I was in the plant all day and, I had occasion to go through the plant, and I bumped into Angelo.

Whenever we see each other, we say "Hello, how are you?"

He said, "I hear you are going to have an election down there."

So I said, "Yes."

So he says, "We will see about that."

That was it.

Q Did you say anything to Mr. Campione in reply?

A No.

Q Did the conversation go any further than that?

A No.

MR. ZUCKERMAN: I have no further questions.

CROSS-EXAMINATION

BY MR. ARCHER:

Q You said you recall when the NLRB conducted an election --

MR. ARCHER: I'm sorry if I went out of turn.

MR. GORE: Go ahead.

MR. ARCHER: Unless you want to raise some issues I can cross-examine on.

MR. GORE: Go ahead.

BY MR. ARCHER:

Q You say you recall the NLRB conducting an election in September, 1973?

A Yes.

Q During that day, did you have any conversations with an NLRB Agent?

MR. ZUCKERMAN: Objection, your Honor. It's beyond the scope of the direct.

MR. ARCHER: He opened it up. He was talking about NLRB elections.

MR. ZUCKERMAN: No, your Honor, I did not.

The question was merely to place the time.

JUDGE JANUS: What date was this?

MR. ARCHER: September 21st, 1973.

JUDGE JANUS: The date of the election?

MR. ZUCKERMAN: There is no testimony with relation to that on the record, your Honor.

JUDGE JANUS: I think so. It's outside of the scope. I think you are raising new issues here that perhaps you

should have raised in your direct case.

MR. ARCHER: Well, you know, there is a question -- I, perhaps, can call him on rebuttal.

Mr. Marifjeren did testify that the man was the most knowledgeable about what was transpiring concerning this area.

MR. ZUCKERMAN: Not with respect to that, your Honor.

MR. ARCHER: All these documents from the ALA are -- He states a conversation with Mr. Campione. There is clear testimony concerning this background.

JUDGE JANUS: Are you simply probing, or do you have some information about a conversation with a Board Agent?

MR. ARCHER: Yes, I have some information, your Honor.

MR. ZUCKERMAN: Your Honor, it is beyond the scope of the direct. He has rested.

MR. ARCHER: Do you want me to call him as my own witness at the end of your case?

MR. ZUCKERMAN: He has rested his case. He can't put in additional evidence at this time. He has rested.

JUDGE JANUS: I think I'll sustain the objection.

BY MR. ARCHER:

Q You did have a conversation, you testified, with Mr. Campione about an NLRB-conducted election, though, didn't you?

A Yes.

Q This was approximately six or seven days prior to the election?

A Yes.

Q And what was that exact conversation you had, as best you can recall?

A As I testified a few minutes ago, as is customary, if I'm walking through and we see each other, we say "Hello," time of day.

Angelo simply said, "I hear you guys are having an election down there.

I said, "That's right."

He said, "We will see about that."

And that was it.

Q What do you think he meant by that?

A I haven't the foggiest idea.

Q You had seen a petition that Mr. Marifjeren had given you from Mr. Campione, hadn't you?

A A petition?

Q A petition.

MR. ZUCKERMAN: Objection, your Honor. His direct is related solely to a conversation between himself and Mr. Campione.

MR. ARCHER: There is a little background to that conversation.

JUDGE JANUS: I will overrule the objection.

Q I show you General Counsel's Exhibit No. 9. Have you seen this before?

A Yes.

Q What is it?

A It's a piece of paper with signatures of ALA members given to Mr. Marifjeren, who in turn gave it to me.

Q Did you have any conversation with Mr. Marifjeren when he gave you that document?

A Mr. Marifjeren told me that he received it from Angelo Campione, gave it to me for whatever I had to do with it.

I just filed it, that's all I did.

Q But at the same time, you are saying you were not aware during this conversation with Mr. Campione what possibly he could be talking about, you weren't aware that maybe there was a claim that the ALA had to represent any lithographers at Edison?

MR. ZUCKERMAN: Objection, your Honor. His testimony never got close to that assumption.

JUDGE JANUS: Was there any further conversation with Mr. Campione after he made this statement?

THE WITNESS: No, sir, it was as simple as that.

JUDGE JANUS: Did you do anything about Mr. Campione's remark?

THE WITNESS: No.

JUDGE JANUS: I don't know that it matters what Mr. Campione may have thought he was trying to get across.

Did Mr. Campione say why aren't we participating in the election?

THE WITNESS: No, sir.

JUDGE JANUS: Did he mention the election other than --

THE WITNESS: Just what I said. It was that fast, "Hello, how are you," those comments, and that was it.

BY MR. ARCHER:

Q Had you made any arrangements in the context of appearing for that election?

MR. ZUCKERMAN: Objection, your Honor.

JUDGE JANUS: What was the question?

Q What, if any, arrangements had you made as superintendent of employee relations to prepare for that election?

MR. ZUCKERMAN: Objection. It is beyond the scope.

MR. ARCHER: I think it goes down to the same thing. He is testifying to a minute conversation, but I think there is definite bias based on what has been developed already as to what -- that might shape what he has to say.

JUDGE JANUS: It's a matter of discretion. In this case there is some pertinency to the question. I'll permit it.

Q As part of making the arrangements for the NLRB election, what did you do?

A What arrangements?

Q Did you make any arrangements for the NLRB election, such as setting up the polling place? Did you have any conversations with a Board Agent at all?

MR. ZUCKERMAN: Objection, your Honor.

MR. ARCHER: I think I can develop this.

MR. ZUCKERMAN: No, your Honor. He is way beyond the scope of what he was put on here to testify.

MR. ARCHER: You were setting up a man to test his credibility as opposed to what Mr. Campione has testified, which is the key to the case.

MR. ZUCKERMAN: You are attempting to put on additional information. You are not testing credibility.

MR. ARCHER: The point is, we've adduced direct testimony during our presentation of the case from Campione that he had heard from you about an election that Olmstead -- and then he contacted Olmstead.

You are saying that that conversation took place six or seven days before.

We are saying the first time the ALA knew anything about the election was the day before.

I think we have put it into issue about the credibility. We are further arguing that at all times the company was aware of the ALA's interest.

MR. ZUCKERMAN: Mr. Campione did not testify with

respect to that point.

MR. ARCHER: But Mr. Olmstead testified as to the circumstances, and I think it does bear on the credibility.

JUDGE JANUS: What was Mr. Olmstead's testimony?

MR. ARCHER: That he received a call from Mr. Campione, who had just been told.

MR. ZUCKERMAN: The day before.

MR. ARCHER: The question is: Did you talk to a Board Agent?

MR. ZUCKERMAN: And I object to that question.

JUDGE JANUS: Well, I think I will reverse myself. It seems to be getting into the question of knowledge by the company of any possible ALA interest in the election, and that's one of the key issues here.

Even though it is beyond the scope of the direct examination, I will permit it here.

MR. ARCHER: I will rephrase the question.

BY MR. ARCHER:

Q Mr. Ries, do you recall receiving a phone conversation from Mrs. Phyllis Schectman the day before the election?

A Yes.

Q What did she say to you, what did you say to her?

A She told me that she had just received a letter from the ALA, and she asked me if I personally knew of any interest on behalf of the ALA in the election, and I said, "No."

Q What did she say?

A And I said that any of these transactions were handled by our Greenwich people, and I suggested she call Greenwich.

She said, "Thank you very much," and that was it.

Q Do you know whether she did call Greenwich?

A I don't know.

Q Is this the first time you had ever heard that the ALA might have an interest in representing these employees, the lithographic employees at Regency?

A To my knowledge, yes.

Q Do you recall ever having received a letter from Mr. Marifjeren that he had given you that Hansen had sent to him?

I will show you a copy of it.

I show you General Counsel's Exhibit 3. This letter right here, do you ever recall seeing a copy of this?

A Yes.

Q Isn't it in fact the letter that Mr. Marifjeren gave you?

A Yes.

Q What did you do with that letter?

A Sent it to Greenwich.

I have no control over these things. I am just a local GSER.

Q In fact, the first knowledge you had, ever, of any ALA

interest in that plant wasn't on September 20th, it was when you saw that letter, and when you saw the petition from Mr. Campione a few days later, isn't that correct?

A If you call that interest. I saw the letter and I saw the petition. What else can I tell you.

Q What does the letter say?

A You want me to read it?

Q Yes.

A "Dear Mr. Marifjeren: Your notice to all employees dated December 20, 1972 has come to our attention.

"The notice announced that the Hudson plant will cease operations by August 31, 1973 and that a new can manufacturing facility will be opened in Edison Township.

"As an overwhelming majority of the employees whom we represent have signified to us their desire to work at the Edison plant and to continue to be represented by us, we will expect you to continue to recognize Local 1 as the collective bargaining agent of your Lithographic employees.

"We are taken aback that you did not see fit to advise us of this development and give us the opportunity to discuss it with you.

"Very truly yours, Edward Hansen, Executive Vice President."

Q After you reviewed that letter you sent it on to

Greenwich?

A I didn't review it. I just sent it to Greenwich.

Q You looked at it?

A Sure.

Q Did you discuss it with Marifjeren?

A Not really.

Q Who did you discuss it with?

A No one.

Q When Greenwich receive it, did they call you up at all about it?

A No, sir.

Q Not at all?

A Not that I recall. They handle all these matters.

Q They never discuss these employee matters with you?

A Not this type of a thing.

Q Weren't you supervising employee relations at Hudson at this time?

A Yes.

Q Shortly after, then, you got this petition right here?

A Right.

Q What did you do with that?

A Filed it.

Q Did you discuss it with Marifjeren?

A Other than to say that, as I said before, "Larry said I got this from Angelo. You take care of it."

I put it in my file.

Q Did you send a copy of it to Greenwich?

A Not right then. Later on I did.

Q When did you send it later on?

A I don't recall.

Q Could it perhaps have been sometime in July or August?

MR. ZUCKERMAN: Objection, Your Honor. He answered he doesn't recall.

JUDGE JANUS: Is it before or after the election?

Q Was it before the election?

A I honestly don't know.

Q Was it before the petition?

A I don't know.

Q So, going back to our original question, when you discussed the matter of the election with Mr. Campione and Mr. Campione made certain remarks about not having the election, in fact, you were aware already that ALA might have an interest in representing those employees?

MR. ZUCKERMAN: Objection, Your Honor.

A I don't understand what you are saying.

MR. ZUCKERMAN: There is a distinction here starting to emerge in the language that's being used.

Mr. Archer is starting to equate those letters here as he interprets them as showing "an interest in an

election."

I doubt very hightly, and I submit, that those documents can not be so interpreted.

JUDGE JANUS: It specifically says that the ALA has an interest in representing those employees.

MR. ARCHER: The key to our case, Your Honor, if I might, to get off the point -- the key to the case, the Board's contention is, that at all material times the employer was aware of an interest by the ALA in representing any Lithographic production employees at Edison.

Now, the nature of that interest, according to the Board law, needs to be 30 percent showing of interest, as long as it's clearly not unsupportable.

The ALA -- we might have ended up with an R case hearing here where the ALA lost.

The question is, they had the right, through this agency, to determine any QCS.

JUDGE JANUS: Who is it up to to tell the Board that the ALA has an interest in the election or representation?

MR. ARCHER: Our contention is that the employer has a duty to advise the Board of any unions that may have contacted it concerning an interest in representing a group of employees, which is clearly the case here.

A normal Board agent is dealing with hundreds of

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unions and companies. We are not expected to have knowledge.

It is our contention, and if deemed necessary we can produce a witness that will say that the company was asked --

JUDGE JANUS: Doesn't the ALA have a responsibility to make its interests known to the Board?

MR. ARCHER: If it is advised.

MR. GORE: Precisely.

MR. ARCHER: It was never advised, our testimony has been, until the day before the election.

JUDGE JANUS: I'm not going to decide the case now.

BY MR. ARCHER:

Q Were you present at the Edison plant at the day of the election?

A Yes.

Q Did you involve yourself in any way with the running of that election? For example, did you certify the tally of ballots for the election?

MR. ZUCKERMAN: Objection, Your Honor. Again we are going all over the place.

MR. ARCHER: I don't think we are. I think we have crystallized on the issue of the knowledge that the company might have had of an interest.

JUDGE JANUS: What does it matter whether he

participated in the election?

MR. ARCHER: Withdrawn.

I don't have any further questions.

CROSS-EXAMINATION

BY MR. GORE:

Q Mr. Ries, do you know a gentleman by the name of Michael Marino?

A Yes, sir.

Q Who is Mr. Marino?

A He's president of the Steel Workers Local, Local 6300, that represents the steel workers at Hudson plant.

Q There has been a substantial amount of testimony with respect to the company posting a notice of the closing of the Udson plant and some testimony with respect to the opening of the Regency plant.

Did you have anyconversation with Mr. Marino with respect to the representation of the employees at the Regency plant?

A Yes.

Q Could you relate what that conversation may have been?

A Mike Marino, from the time that we made the announcement of the fact that we are going to have a new plant, said to me, "Boy, we want automatic transfer rights over to that plant."

Q What was your response to Mr. Marino's request for

transfer of bargaining rights?

A I told him that the companypolicy, which Greenwich passed down to me, is that there were no automatic transfer rights. That was a new plant. It was not my decision.

MR. GOLD: I have no further questions.

JUDGE JANUS: I have questions which are beyond the scope of your direct, but I'll exercise my prerogative to ask anything I want.

Apparently other unions that had employees whom they represented at the Hudson plant -- I think there was a mention made of Operating Engineers. Are they one of the unions?

THE WITNESS: Yes.

JUDGE JANUS: What other union was there?

THE WITNESS: The Operating Engineers. At that time the Chauffeurs, Street Chauffers.

JUDGE JANUS: Teamsters?

THE WITNESS: Yes. At that time, Local 20, which was the office employees.

JUDGE JANUS: Now, were any of these unions notified of the pending election?

THE WITNESS: The pending election?

JUDGE JANUS: The one at Regency.

THE WITNESS: Not that I know of.

JUDGE JANUS: Have you recognized the Operating Engineers for employees at Regency?

THE WITNESS: No.

JUDGE JANUS: The Teamsters?

THE WITNESS: No, sir.

JUDGE JANUS: Any other union?

THE WITNESS: No, sir.

JUDGE JANUS: I have nothing further.

MR. ARCHER: May I?

JUDGE JANUS: Yes.

BY MR. ARCHER:

Q Do you have any Operating Engineers at Regency? You don't, do you?

A No, sir.

Q Do you have any truck drivers at Regency?

A No, sir.

Q What's the other classification? I forgot.

A Local 20.

Q I assume you have some office employees.

A Yes, sir.

Q How many?

A Fourteen non-exempt.

Q Are they recognized --

JUDGE JANUS: They would be excluded.

MR. ARCHER: Under the exclusions --

MR. ZUCKERMAN: He said non-exempt.

MR. ARCHER: Let's make a distinction.

As I understand the certification, it exempts all office clerical employees to begin with.

JUDGE JANUS: All right. What sort of clerical employees are these? Are they plant clerical or office clericals, accounting --

THE WITNESS: Office clericals, accounting people, timekeepers.

JUDGE JANUS: Do you know whether they are represented by the office employees union now?

THE WITNESS: Not now.

JUDGE JANUS: At Regency?

THE WITNESS: No. They were at Hudson.

MR. ZUCKERMAN: I have nothing further.

MR. GORE: I have nothing further.

JUDGE JANUS: Thank you.

(The witness excused.)

MR. ZUCKERMAN: I call Mr. Leser to the stand.

WILLIAM J. LESER

called as a witness, having been first duly sworn by the Administrative Law Judge, testified as follows:

DIRECT EXAMINATION

BY MR. ZUCKERMAN:

Q Tell us your position, Mr. Leser.

A Field Administrator-Labor relations, American Can Company.

Q How long have you been employed by American Can?

A About twenty-seven years.

Q Are you familiar with the facts surrounding the negotiations and execution of the most recent collective bargaining agreement with the ALA?

A Yes, sir.

Q Did you represent the company in negotiating a contract?

A Yes.

Q During the negotiations of that contract, did the ALA make any demands for the transfer of any employees from Hudson to Regency?

A No, sir.

Q Did they make any demands whatsoever with respect to the employees at Hudson vis-a-vis the opening of Regency?

A No, sir.

Q Mr. Leser, did you sometime in the month of May, '73 have a meeting with Mr. Hansen and Mr. Bully?

A Yes, I did.

Q Will you tell us where that meeting took place?

A At the Hotel Commodore.

Q In New York City?

A In New York City.

Q Do you remember when that meeting was?

A It was a luncheon meeting. The date was May 14th.

Q Do you recall how long that meeting was?

A Approximately an hour and a half.

Q Would you tell us what transpired at that meeting?

A We met in the Tudor Room of the Commodore for lunch, and over the course of lunch, we -- Mr. Bully primarily discussed the general can making business, the problems we were evidencing as a company with self-manufacturers, the impact of the aluminum can on our business, the impact of the new two-piece can and how it was effecting the regular three-piece can that we presently make, generalized topics such as that.

We also discussed with Mr. Hansen the recent jurisdictional fight that was going on or that had gone on at our Milwaukee location on the two-piece can with printing presses for the two-piece can -- the two-piece can, by the way, is printed in the round rather than the flat sheet.

There was a jurisdictional argument there between the GAIU, Graphic Arts International Union, and the steel workers as to who would have jurisdiction over the printing process.

The decision was that the process was awarded to the

Steel Workers. The jurisdiction was awarded to the Steel Workers.

We then discussed with him the man power problems that we were evidencing in the GAIU as opposed to the Steel Workers.

This was over luncheon, over the course of eating.

Towards the end of the luncheon, Mr. Hansen brought up the question of the Hudson close-out, the phase-out at Hudson, and asked whether Local 1 would be -- and stated he would be willing to work with the company if there were any man-power problems or any problems that may be evidenced if Local 1 would get jurisdiction over the Lithographic work down at Regency.

Mr. Bully told him that Regency was a new location, that it was not an extension of Hudson plant of any other location, that we intended to operate Regency on a non-organized basis if at all.

That was about the sum and substance of the conversation. We had coffee and left.

Q Of the hour and a half, about how much time do you estimate you spoke concerning the Hudson phase-out?

A Five minutes, maybe.

MR. ZUCKERMAN: May I have this document marked for identification, please?

(Respondent's Exhibit 5 was marked for identification.)

Q I show you Exhibit marked Respondent's Exhibit 5 for identification.

Can you identify it for us?

A This is a letter addressed to the American Can Company, Jersey City, New Jersey, from James F. Gill, dated May 21, 1974.

Q About nine days ago?

A Yes, sir.

Q Would you read us the whole last paragraph, please?

A "We have been informed that the aforementioned employees were advised that their jobs would be phased out by June 28, 1974.

"It is our position that you are obligated to bargain with Local 1 relative to the effects of the aforementioned phase out, and we hereby demand that you do so."

MR. ZUCKERMAN: I will offer this document in evidence.

MR. ARCHER: Are you raising new issues? I thought that you were --

MR. ZUCKERMAN: I'm not raising new issues.

MR. ARCHER: It's interesting. Just an aside before I make my objection. Before I make my objection, as I recall, Mr. Zuckerman, very early in this proceeding, you took me to substantial task about effects and about effects bargaining, and I said to you that I felt that there was a continuing obligation to bargain and that incidental

or implied in this recognition was effects bargaining.

Are you saying the purpose of this is to buttress my argument over effects?

MR. ZUCKERMAN: You have been telling us for a day and a half now that there is some cockamamie theory of relocation and that the ALA --

MR. ARCHER: If you read --

MR. ZUCKERMAN: Let me finish, Mr. Archer.

MR. ARCHER: I'm sorry, Your Honor.

MR. ZUCKERMAN: You have been telling us for a day and a half about some theory this Board is concocting on a relocation, that all of these employees should have been transferred down to the new plant.

This letter sent by their attorney nine days ago with respect to the Lithographers located at Hudson still doesn't make that demand.

All it wants to do is talk about effects of phase-out.

This letter is crucial to show and does show what the attitude of the ALA has been and what it still is and that the theory concocted by the Board is just that, concocted by the Board for their own convenience.

JUDGE JANUS: Are you making any contention, Mr. Archer, that these employees should have been transferred? Is that part of your case?

MR. ARCHER: What we are contending, Your Honor, is --

I think the relevant case is Frazer Johnson, but -- first of all but not for the unfair labor practices of the employer, these employees would have been transferred, for example, the five that were offered jobs. And, further, that there is a relocation, and as such, there is a duty to bargain over that.

JUDGE JANUS: I think the letter is certainly relevant to that issue and is admissible.

MR. ARCHER: One further point, Mr. Zuckerman. I am sorry I am disturbing you.

For the record's sake, there is a letter outstanding from March 4th, 1974, that does make a demand for recognition.

MR. ZUCKERMAN: You've got it in evidence.

MR. ARCHER: I just wanted to clear that up.

(Respondent's Exhibit 5 for identification was received in evidence.)

BY MR. ZUCKERMAN:

Q Mr. Leser, did you reply to that letter?

A Yes, I did.

MR. ZUCKERMAN: May I have this marked Respondent's Exhibit 6?

(Respondent's Exhibit 6 was marked for identification)

Q Mr. Leser, I show you Respondent's Exhibit No. 6 marked for identification. Would you please tell us what that letter is?

A This is a letter addressed to James F. Gill, Esq. in New York City, dated May 24, 1974 and signed by myself.

Q Is that the letter that was in reply to Mr. Gill's letter of May 21st?

A Yes, it is.

MR. ZUCKERMAN: I offer it in evidence, Your Honor.

MR. ARCHER: May I ask counsel for the respondent for what purpose?

MR. ZUCKERMAN: It just ends the record up. We've replied to a letter we've received. That's the reply to the letter in evidence.

JUDGE JANUS: I'll receive it.

(Respondent's Exhibit 6 for identification was received in evidence.)

MR. ZUCKERMAN: I have no further questions. I am sorry if I didn't say that.

MR. ARCHER: I would like a moment or so.

(Pause)

CROSS-EXAMINATION

BY MR. ARCHER:

Q Mr. Leser, the conversations that you testified to that you had with Mr. Hansen weren't the only conversations that you had with Mr. Hansen, were they?

A No, sir.

Q You had a conversation on or about January 16th, 1973,

with him in which he asked you -- didn't he call you up and ask you -- he was concerned about the employee rights and the Hudson plant and any new locations of the company?

A He called me on January 16th, yes.

Q Didn't he express concern during that conversation as to any employee rights at the Hudson plant?

A He asked me whether any of the employees at Hudson would have employment rights at the Regency location.

Q That was the only conversation? There was no discussion with the phasing out of the employees at Hudson during that conversation?

A No, sir.

Q Did you know a Mr - Lester Cooper?

A Yes, sir.

Q What was your relationship to him, did you work together?

A He is house counsel.

Q He was house counsel?

A He was house counsel.

Q At that time he was?

A Yes.

Q Did you workon matters with him? I don't understand the relationship. Did you work in the same office, for example?

A No. To give you a little idea of the structure of

the company, he is in corporate employee relations. I'm in packing employee relations, a branch of corporate, if you want to call it that.

My duties are to handle various third and fourth stage grievances, arbitrations and negotiations in the eastern area of the United States.

Mr. Cooper is the lawyer -- or, was one of the group of lawyers in the corporate labor department. He would handle country-wide not only labor, but also OSHA.

JUDGE JANUS: Where was he stationed?

THE WITNESS: He was also in Greenwich, sir. He would be on the first floor. I was on the third floor.

JUDGE JANUS: You are from Greenwich?

THE WITNESS: Yes, sir.

Q So, as I recall further from your affidavit, you received copies of certain letters that Hansen wrote to Marifjeren --

MR. ZUCKERMAN: Objection, Your Honor. Again we are going beyond the scope of the direct.

MR. ARCHER: Your Honor, he just raised an issue with respect to effects.

MR. ZUCKERMAN: I didn't raise an issue of effects. I did not do that at all, sir. I put a letter in which stated nothing more than what the attorney for the ALA thought his position was.

JUDGE JANUS: Overruled.

Q Did you receive copies of correspondence that Ed Hansen wrote to either Mr. Cooper or Mr. Marifjeren?

A I received a copy of one letter that Mr. Hansen wrote to Mr. Marifjeren.

Q Okay. Did you get a copy of the response?

A Mr. Marifjeren did not answer that particular letter.

Q Did you receeive a copy of Mr. Cooper's response?

A I received a copy of Mr. Cooper's response to that particular letter, yes, sir.

Q Are you aware that Mr. Hansen wrote a subsequent letter to Mr. Cooper?

A No, sir.

Q As I understand it, you did have some discussion during your May 14th meeting with Mr. Hansen about the phasing out Hudson, is that correct?

A Yes, sir.

Q And that conversation was that none of the employees at Hudson plant had rights to employment at Regency?

A That is correct.

Q And that the Regency plant was a new location and the company intended to hand pick the employees?

A Is that a question?

Q Yes.

A Yes. Yes, that's correct.

Q So you were aware, as I understand it, the end of January, that the ALA might have an interest in representing the employees at Edison? Were you aware in January that the ALA might have an interest in representing the Lithographic employees at Edison?

A I wasn't personally aware of it. I could have assumed it, but --

Q You had a conversation with Mr. Hansen concerning it?

A Merely from Mr. Hansen's questions about what rights the employees would have at Regency, when I told him they would have no rights, that was the end of the conversation.

Q But you subsequently received a copy of a letter Mr. Hansen wrote to Mr. Marifjeren?

A Yes, sir.

Q Are you aware, Mr. Leser, whether the employer has responded to Mr. Gill's letter of March 4th demanding recognition?

A No.

Q You are not aware?

A No, sir.

Q Did you make any of the arrangements for the NLRB election?

A No, sir.

Q Did you have any discussions with either Mr. Ries or Mr. Cooper concerning the NLRB election?

A No, sir.

MR. ARCHER: I have no further questions.

MR. ZUCKERMAN: Nothing, Your Honor.

MR. GORE: Nothing.

JUDGE JANUS: Thank you.

(Witness excused.)

JUDGE JANUS: Let's take a few minutes recess.

(Recess taken.)

JUDGE JANUS: On the record.

MR. ZUCKERMAN: Mr. Archer, can we stipulate to these documents at this time?

MR. ARCHER: Let me take a look at them.

As I understand, we had a discussion before about this.

As I indicated to you before, I would stipulate to them on the basis that if you called a witness he would testify to the same effect.

MR. ZUCKERMAN: If I called a witness he would testify that this was prepared under his direction from company records.

JUDGE JANUS: What is it?

MR. ZUCKERMAN: Your Honor, the first document is a list of supervisors who were employed at Hudson in August of 1972, and it indicates where their ultimate disposition was, whether it was Regency plant, Hillside plant, whether

they died, were disabled, retired, went to Fairport, Philadelphia, etc.

It indicates where they all ended up.

JUDGE JANUS: Those are only supervisors?

MR. ZUCKERMAN: Just supervisors, this list.

Why don't we ask to identify it as Respondent's Exhibit 7?

(Respondent's Exhibit 7 was marked for identification)

MR. ZUCKERMAN: The second listing, Your Honor, is a list of employees who were employed at Hudson, their job classification at Hudson and these employees are the employees who ultimately came to Regency, the date of starting at Regency and the classification at Regency.

I ask that this be marked as Respondent's Exhibit 8 for identification.

(Respondent's Exhibit 8 was marked for identification.)

JUDGE JANUS: All of those are steel workers, aren't they?

MR. ZUCKERMAN: They would have been steel workers at Hudson, yes, Your Honor.

JUDGE JANUS: Why do we need them? You have compiled it?

MR. ZUCKERMAN: That's not really true. There has been testimony that employees came over from Hudson to Regency. It's vague on the record. We have no objection

as to making it clear.

JUDGE JANUS: I will accept them.

Do you have any objection?

MR. ARCHER: For whatever weight it would have to be given, no.

(Respondent's Exhibit 8 for identification was received in evidence.)

MR. ZUCKERMAN: The third document is a complete listing of mechanical and production employees.

This is the listing of employees by seniority. It indicates those employees who were employed at Hudson, those who requested employment at Regency, those who were offered employment at Regency, and of those who were offered employment at Regency, whether they said yes or no.

It is an entire listing of the employees then existing at Hudson.

I Offer this as Respondent's Exhibit 9.

(Respondent's Exhibit 9 was marked for identification.)

JUDGE JANUS: Any objections?

MR. ARCHER: No objection.

JUDGE JANUS: You are not greatly in favor?

MR. ARCHER: I question the materiality. I had requested the information originally for trial preparation.

I feel that the issue at hand is the continuity of operations between the Lithographic Departments, and I

question the materiality of this information as opposed to that, except where it might contain any Lithographic employees, which I understand it does contain, the names of the five.

MR. ZUCKERMAN: No, it doesn't contain the names of the five.

MR. ARCHER: Or the Lithographic supervisors.

I question its materiality, really, to the issues.

JUDGE JANUS: I'll accept it.

MR. ZUCKERMAN: Thank you, sir.

(Respondent's Exhibit 9 for identification was received in evidence.)

MR. ZUCKERMAN: Your Honor, I rest.

JUDGE JANUS: Off the record.

(Discussion off the record)

JUDGE JANUS: On the record.

We will be in recess until you let us know what you hear from your witnesses one way or the other.

(Recess taken)

JUDGE JANUS: On the record.

I don't know whether you did this on the record, Mr. Zuckerman, but I understand your case is closed.

MR. ZUCKERMAN: That is correct, sir.

JUDGE JANUS: Mr. Archer, you have a statement?

MR. ARCHER: Yes, Your Honor.

I do not have any rebuttal witnesses. However, in light of the Respondent's last exhibit, the letter dated May 24, 1974, to Mr. Gill, who is not present now, I would endeavor, and I have endeavored to contact him, and he has been unavailable.

I should like that we recess until tomorrow morning to give me such time as to contact him if he desires to put on any rebuttal witnesses concerning that letter.

JUDGE JANUS: You don't mean the letter from him to --

MR. ARCHER: No. I mean the response.

JUDGE JANUS: The response from Mr. Leser to Mr. Gill?

MR. ARCHER: Right. In light of some of the statements that are made in that letter, I feel that Mr. Gill should have the opportunity to review them.

JUDGE JANUS: Mr. Zuckerman, I presume you have no strong objection.

MR. ZUCKERMAN: No strong objection, Your Honor.

JUDGE JANUS: We will try to get that inflection on the record.

Off the record.

(Discussion off the record)

JUDGE JANUS: On the record.

We will be in recess until 9:30 tomorrow morning.

(Whereupon, at 4:35 o'clock p.m., the hearing in the above entitled matter was adjourned to 9:30 a.m., May 31, 1974, at the offices of National Labor Relations Board.)

BEFORE THE NATIONAL LABOR RELATIONS BOARD

TWENTY-SECOND REGION

In the Matter of:	:	
AMERICAN CAN COMPANY	:	Case Nos.
and	:	22-CA-5619
LOCAL ONE, AMALGAMATED LITHOGRAPHERS OF AMERICA, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO.	:	22-CA-5803 22-RC-5853

970 Broad Street
Newark, New Jersey

Friday, May 31, 1974

The above-entitled matter came on for further hearing, pursuant to adjournment, at 9:30 o'clock a.m.,

BEFORE:

MILTON JANUS, Administrative Law Judge.

APPEARANCES:

ROBERT ARCHER, ESQ.,	970 Broad Street, Newark, New Jersey, appearing on behalf of the General Counsel
JAMES GILL, ESQ.,	230 Park Avenue, New York, New York, appearing on behalf of Local One
DAVID L. GORE, ESQ.,	Five Gateway Center, Pittsburgh, Pennsylvania, appearing on behalf of United Steel Workers of America
MARTIN B. ZUCKERMAN, Esq.	Simpson, Thatcher & Bartlett, One Battery Park Plaza, New York, N.Y., appearing on behalf of American Can Company

I N D E X

Witness	Direct	Cross
Angelo Campione	329	331

E X H I B I T S

General Counsel's	Ident.	Evidence
18 and 19	329	329

ooo

P R O C E E D I N G S

JUDGE JANUS: On the record.

I think, Mr. Archer, you indicated yesterday that you weren't going to have any rebuttal witnesses.

Does that still hold?

MR. ARCHER: No, Your Honor.

As I advised the parties subsequent to the close of the hearing yesterday, I have one short rebuttal witness.

May we go off the record for a minute?

JUDGE JANUS: Off the record.

(Discussion off the record)

JUDGE JANUS: On the record.

MR. ARCHER: In an off-the-record discussion with Mr. Zuckerman, he has advised me, to the best of his knowledge, that between correspondence dated March 9, 1973, a letter from Mr. Lester Cooper to Mr. Edward Hansen, which is General Counsel's Exhibit No. 6 and a letter to Mr. James Gill from Mr. William Leser, which is Respondent's Exhibit 6, there has been no correspondence sent by the company to the ALA RElative to the closing of the Hudson plant or any work at the Regency plant.

Is that correct?

MR. ZUCKERMAN: May I clarify one thing.

There is no correspondence, to the best of my knowledge.

MR. ARCHER: Okay.

JUDGE JANUS: Now, as to other matters we left pending, I think there was one as to the wage rates for the lithographic production employees at two plants.

MR. ZUCKERMAN: With respect to that, Your Honor, as of October 1, 1973, the basic wage rate for two color press men working under an ALA contract for a 35-hour work week would have been $7.23.

For a two-color press man working a 40-hour week under a Steel Workers agreement, the wage rate was $6.32.

Present rates for an ALA contract, 35-hour work week, is $7.301.

For a Steel Worker contract, 40-hour work week, it is $6.962.

In addition, in the ALA contract, there appears the following provision -- excuse me -- the following paragraph, which is entitled "Wet Varnish Unit."

"A differential will be paid to the press men and feeders for work performed on a unit having a lithographic press and a coater in tandem. This differential will be twenty cents per hour for the press men and 8.8cents per hour for the feeders. The rate will be paid whether or not the unit is in operation."

A similar differential is provided for in the Steelworker agreement.

MR. ARCHER: Pursuant to an off-the-record discussion with Mr. Zuckerman, I would at this time like to mark for evidence, or for identification, as General Counsel's Exhibits Nos. 18 and 19, two letters.

(The documents above referred to were marked for identification as General Counsel's Exhibits 18 and 19.)

MR. ARCHER: At this time I recall to the stand --

JUDGE JANUS: Well, let me receive General Counsel's 18 and 19.

MR. ARCHER: I move General Counsel's Exhibits 18 and 19 marked for identification.

MR. ZUCKERMAN: No objection.

JUDGE JANUS: I will receive them.

(The documents previously marked General Counsel's Exhibits 18 and 19, for identification, were received in evidence.)

MR. ARCHER: I recall to the stand at this time Angelo Campione.

ANGELO CAMPIONE

was recalled as a witness by the General Counsel, having been previously sworn testified as follows;

DIRECT EXAMINATION

Q (By Mr. Archer) Mr. Campione, you were present yesterday when Mr. Ries testified, weren't you?

A Yes.

Q Okay. Do you recall Mr. Ries testifying about an alleged conversation with you?

A Yes.

Q Did such a conversation take place?

A No.

Q At any time did you have a conversation with Mr. Ries prior to the Steelworkers' election?

A I had three days before the election on a Wednesday. I walked into the locker room when the steelworker said to me, "You know, they are going to have an election down at Regency Friday."

I said, "You guys are Friday. They aren't going to have an election down there."

"Well, they are."

"Okay. I'll find out later on."

I went upstairs to the seventh floor.

About 10:00 o'clock, -- I have a telephone next to my press -- I called up Hal Ries and I said, "Al, is that right, they are going to have an election down at Regency Friday?"

He said, "Yes."

I said, "Thank you." and I hung up.

Q What did you do then?

A Beg pardon?

Q What did you do then?

A Well, I waited a couple of hours, and I called up the union and I couldn't get them, tried twice that day.

Q This was on Wednesday?

A That's right, Wednesday. Thursday morning at 10:00 o'clock I finally reached Al Olmstead.

I said, "What's going on here? I hear they are going to have an election down at Regency."

He said, "Well, you got me."

I said, "Let's find out." I said, "Let's not wait any more. Let's find out."

And I called them back on a Friday and he said to me that he got a subpoena in here or a grievance in to stop the election.

Q Mr. Campione, other than this short or whatever it was telephone conversation with Mr. Ries on the Wednesday preceding the election, which occurred on Friday, did you have any other conversations with Mr. Ries prior to the election concerning the election?

A No. That's all I had, just them few words on the telephone.

MR. ARCHER: No further questions.

CROSS EXAMINATION

Q (By Mr. Zuckerman) Mr. Campione, how long have you known Mr. Ries?

A About ten years.

Q And during those ten years you have talked with Mr. Ries pursuant to your role as a shop steward, isn't that correct?

A That's right.

Q And you are rather used to seeing Mr. Ries floating around the factory, aren't you?

A I didn't get that.

Q Mr. Ries used to walk up into the factory on many occasions, didn't he?

A I couldn't testify to that, if he's walking around the factory. If he came around to my press, I'd see him. If he didn't come around the press, I wouldn't see him.

Q You saw him around your press, didn't you, on many occasions?

A Yes, a few occasions.

Q And when he came around, you would talk to him, say hello?

A Sometimes, yes.

Q Shoot the breeze with him a little bit?

A Beg pardon?

Q You'd shoot the breeze with him a little bit?

A Yes.

Q Pass the time of day?

A I wouldn't say pass the time of day.

Q What would you do?

A He'd have something to find out or I have something to tell him. I'd tell him or he would tell me and that would be it.

Q Okay. But you would talk to him.

A Sure. I talk to anybody.

Q Okay. In your testimony just now you said that you spoke to Mr. Olmstead on the phone and you said something to the effect of, "Let's not wait any more." to Mr. Olmstead.

A That's right.

Q What did you mean by that?

A Well, I was under the impression that before you can have an election in a new shop, whatever they call a new shop, that you have to have so many people working in your unit. And I found out that I was wrong. You don't have to have any, according to the conversations been having here now, I learned something I should have learned twenty years ago. Then I would have hounded the company if we were interested in going to Regency or not.

And assuming that they were, have to have a certain amount of people there before they have an election,we didn't have anybody working there. In fact, we didn't have anybody representing us -- I don't say representing -- a union man, till December 17th when one of our foremens went over to Regency to work.

A press ddidn't start up until February sometime and

I couldn't see where I had any rights to go in and ask for an election.

Q Is Rothwell an ALA member?

A Yes, he is a member of our union.

Q Okay.

A Assuming all that, I didn't have any rights, I didn't think I had any rights to press the company or the union for any answer right then.

Q I see.

MR. ZUCKERMAN: I have nothing further, Your Honor.

JUDGE JANUS: Thank you. That's all.

(Witness excused)

JUDGE JANUS: Does either party wish to make a closing statement?

MR. ZUCKERMAN: I don't wish to make a closing statement. I would like to make a motion, Your Honor.

JUDGE JANUS: Mr. Zuckerman.

MR. ZUCKERMAN: Fine. Your Honor, at this time I would like to make a motion for summary judgment based on no cause of action has been made out by General Counsel.

JUDGE JANUS: Well, I will take it under advisement.

MR. ZUCKERMAN: Fine.

JUDGE JANUS: It won't be summary but --

MR. ZUCKERMAN: I understand.

And, Your Honor, I would also renew my prior motions

to strike the 8(a)(5) allegations from the complaint.

JUDGE JANUS: I will consider that and rule in my decision on it.

MR. ZUCKERMAN: Thank you, Your Honor.

JUDGE JANUS: Off the record, please.

(Discussion off the record)

JUDGE JANUS: On the record.

The date for the receipt of briefs in Washington is July 1, 1974.

There being nothing further, the hearing is now closed.

MR. ZUCKERMAN: Thank you very much for your consideration, Your Honor.

MR.ARCHER: Thank you, Your Honor.

JUDGE JANUS: Okay.

(Whereupon, at 10:05 o'clock a.m., the hearing in the above entitled matter was closed.)

EXHIBIT GC-1(a)

UNFAIR LABOR PRACTICE CHARGE

Dated: September 27, 1973

FORM NLRB-501
(2-67)

Form Approved
Budget Bureau No. 64-R001.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
American Can Company

b. Number of Workers Employed

c. Address of Establishment (Street and number, city, State, and ZIP code)
317 St. Paul's Avenue
Jersey City, New Jersey 07306

d. Employer Representative to Contact
L.L. Marifgerin

e. Phone No.

f. Type of Establishment (Factory, mine, wholesaler, etc.)
Factory

g. Identify Principal Product or Service
Lithographed Cans

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (2) (5) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

From on or about December 20, 1972 the employer has refused to bargain with Local One as the collective bargaining representative of the employers lithographic production employees employed at its Jersey City, New Jersey plant and as the collective bargaining representative of its lithographic employees employed at its plant located in Edison Township.

From on or about December 20, 1972 the employer has wrongfully rendered aid and assistance to the United Steel Workers Union in becoming the collective bargaining representative of lithographic production employees employed at the employers Edison, New Jersey plant to the exclusion of such employees rightful collective bargaining representative, Local One, ALA

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)
Local One Amalgamated Lithographers of America

4a. Address (Street and number, city, State, and ZIP code)
113 University Place, New York, New York

4b. Telephone No.
AL 4-5404

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
International Typographical Union

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By James F. Gill
(Signature of representative or person filing charge)

Attorney
(Title, if any)

Address 230 Park Avenue
New York, New York 10017

689-7766
(Telephone number)

September 27, 1973
(Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 760-011

EXHIBIT GC-1(c)

UNFAIR LABOR PRACTICE CHARGE

Dated: March 4, 1974

FORM NLRB-501 (2-67)

Form Approved
Budget Bureau No. 64-R001.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.	DO NOT WRITE IN THIS SPACE Case No. Date Filed

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer	b. Number of Workers Employed
AMERICAN CAN COMPANY	

c. Address of Establishment (Street and number, city, State, and ZIP code)	d. Employer Representative to Contact	e. Phone No.
3 Kilmer Road Edison, New Jersey		985-6206

f. Type of Establishment (Factory, mine, wholesaler, etc.)	g. Identify Principal Product or Service
Factory	Lithographed Cans

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) and (5) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about October 12, 1973, George Grupe, Charles Amorasi, Robert Rizzardi and Edward Lemke applied for jobs as lithographic production employees at the employer's plant whereupon they were told that they would not be hired unless they became members of the United Steelworkers of America.

From on or about March 4, 1974, the employer wrongfully refused to recognize Local One, Amalgamated Lithographers of America as the collective bargaining representative of the lithographic production employee employed at the plant located in Edison Township, New Jersey.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

Local One, Amalgamated Lithographers of America

4a. Address (Street and number, city, State, and ZIP code)	4b. Telephone No.
113 University Place, New York, New York 10017	AL 4-5404

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

International Typographical Union

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By _____ (Signature of representative or person filing charge) _____ Attorney (Title, if any)

James F. Gill

Address 230 Park Avenue, New York, New York — 689-7766 (Telephone number) — March 4, 1974 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 788-811

EXHIBIT GC-1(e)

ORDER CONSOLIDATING CASES, COMPLAINT AND NOTICE OF HEARING

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SECOND REGION

AMERICAN CAN COMPANY

and

Case Nos. 22-CA-5619
22-CA-5803

LOCAL ONE, AMALGAMATED LITHOGRAPHERS OF AMERICA, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO

Party to the Contract

ORDER CONSOLIDATING CASES, COMPLAINT AND NOTICE OF HEARING

It having been charged in Case No. 22-CA-5619 and in Case No. 5803 by Local One, Amalgamated Lithographers of America, International Typographical Union, AFL-CIO of 113 University Place, New York, New York, herein called Lithographers, that American Can Company, of W. R. Grace Park, Pierson Avenue, Edison, New Jersey, herein called Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for the Twenty-second Region, having duly considered the matter and deeming it necessary in order to effectuate the purpose of the Act, and to avoid unnecessary costs and delay,

IT IS HEREBY ORDERED, pursuant to Section 102.33 of the Board's Rules and Regulations, Series 8, as amended, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated, the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, hereby issues this Complaint and Notice of Hearing, and alleges as follows:

1. (a) The Charge in Case No. 22-CA-5619 was filed on September 28, 1973.

(b) A copy of the Charge in Case No. 22-CA-5619 was served by registered mail upon Respondent and United Steelworkers of America, AFL-CIO, herein called Steelworkers, on September 28, 1973.

(c) The Charge in Case No. 22-CA-5803 was filed on March 5, 1974.

(d) A copy of the Charge in Case No. 22-CA-5803 was served by registered mail upon Respondent on March 6, 1974 and upon the Steelworkers on March 13, 1974.

2. Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New Jersey.

3. At all times material herein Respondent has maintained its principal office and plant at American Lane, Greenwich, Connecticut and various other plants throughout the United States and Canada including a plant located at 317 St. Pauls Avenue, Jersey City, New Jersey and also a plant located at Pierson Avenue, Edison, New Jersey herein called the Jersey City plant and Edison plant, respectively, and is now, and at all times material herein has been continuously, engaged at said plants in the manufacture, sale and distribution of metal cans and related products. Respondent's Jersey City and Edison plants are its only facilities involved in this proceeding.

4. In the course and conduct of Respondent's business operations during the preceding twelve months, said operations being representative of its operations at all times material herein, Respondent caused to be purchased, transferred and delivered to its Edison plant, goods and materials valued in excess of $50,000, of which, goods and materials valued in excess of $50,000 were transported to said plant in interstate commerce directly from states of the United States other than the State of New Jersey.

5. Respondent is, and at all times material herein, has been an Employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

6. (a) Lithographers, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

(b) Steelworkers, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

7. At all times material herein, the following named persons have occupied the positions with Respondent set forth below opposite their respective names:

Lester L. Cooper, Jr.	-	Assistant Employee Relations Counsel-Corporate Employee Relations
Andrew C. Muse	-	Director of Labor and Compliance Law-Corporate Employee Relations
William J. Leser		Field Administrator, Labor Relations
Larry Marifjerin	-	Plant Manager
Al Reese	-	Personnel Manager

8. At all times material herein, the persons named above in paragraph 7 have been and are now supervisors within the meaning of Section 2(11) of the Act, and have been and are now agents of Respondent acting on its behalf.

9. On or before January 1, 1944, a majority of the lithographic production employees employed by the Respondent at its Jersey City plant designated and selected Lithographers as their representative for purposes of collective bargaining with the Respondent.

10. (a) Since on or before January 1, 1944, and at all times material herein, Lithographers has been and is now the exclusive representative of a unit comprised of all lithographic production employees employed by the Respondent at its Jersey City plant for the purposes of collective bargaining and, by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(b) The most recent collective bargaining agreement covering the employees referred to above in paragraphs 9 and 10(a) was executed by Lithographers and the Respondent on April 11, 1973 and is effective from May 1, 1973, through and including April 30, 1976.

(c) The collective bargaining agreement referred to above in paragraph 10(b) does not cover Respondent's production and maintenance employees employed at its Jersey City plant who have been represented at all times material herein, by the Steelworkers.

11. (a) On or about August 8, 1972, Respondent announced to its Jersey City plant employees its decision to close its Jersey City plant.

(b) On or about December 20, 1972, the Respondent announced to its employees referred to above in paragraphs 10(a) and (c) its decision to open the Edison plant. At the same time, Respondent announced that all operations would cease at its Jersey City plant on or about August 31, 1973 and that employees employed by the Respondent at its Jersey City plant would upon application be considered for employment at its Edison plant.

12. On or about January 19, 1973, Lithographers by letter advised Respondent that an overwhelming majority of its employees represented by Lithographers employed in the unit described above in paragraph 10(a) desired to transfer to Respondent's Edison plant and be represented by Lithographers.

13. (a) On or about September 1, 1973, Respondent commenced operations at the Edison plant.

(b) Since the date referred to above, all aerosol can operations previously performed by the Respondent at its Jersey City plant have been transferred to its Edison plant.

14. (a) On or about August 23, 1973, Steelworkers in Case No. 22-RC-5853, filed a petition to represent Respondent's Edison plant employees in the unit consisting of all production and maintenance employees including Lithographers.

(b) On September 10, 1973, the Acting Regional Director for the Twenty-second Region approved a Stipulation for Certification Upon Consent Election Agreement executed by the parties providing for an election to be conducted on September 21, 1973, in a unit consisting of all "hourly-rate" production and maintenance employees employed by the Employer at its Edison plant, excluding office clerical employees, professional employees, confidential employees, managerial employees, watchmen, guards and supervisors as defined in the Act.

(c) At the time of the approval of the Stipulation for Certification Upon Consent Election Agreement described above Respondent represented that there were no Lithographic production employees employed by Respondent at its Edison plant and that there would be none on the date of the election.

(d) On or about October 1, 1973, in Case No. 22-RC-5853, the Regional Director for the Twenty-second Region of the Board, pursuant to the terms of the election conducted on September 21, 1973, certified that Steelworkers was the exclusive collective bargaining representive for the employees employed in the unit described above in subparagraph 14(b).

15. On or about October 1, 1973, as a result of the certification referred to above in paragraph 14(d), the Respondent and Steelworkers agreed to include the unit described above in paragraph 14(b) within the provisions of a collective bargaining agreement previously executed by them on or about March 14, 1971 (effective from February 15, 1971 to February 14, 1974) and renegotiated thereafter, which covered various plants of the Respondent in the United States and Canada, and since that date have maintained in effect and enforced said agreement.

16. The agreement between Respondent and Steelworkers referred to above in paragraph 15 contains, inter alia, the following provisions:

ARTICLE 5--UNION MEMBERSHIP
AND SERVICE CHARGES

5.2 All employees covered by this agreement who are members of the union in good standing on the effective date of this agreement shall maintain their membership in good standing for the duration of this agreement. All employees who are not members of the union in good standing and all employees hired on or after the effective date of this agreement shall become members of the union within 30 calendar days following the effective date of this agreement or date of employment, whichever is the later, and thereafter shall maintain union membership in good standing for the duration of this agreement. For the purpose of this agreement the term "good standing" is defined to refer only and to be limited to the payment of union membership dues and initiation fees. For the purposes of this section, an employee shall not be deemed to have lost his membership in the union in good standing until the International Secretary-Treasurer of the union shall have determined that the membership of such employee in the union is not in good standing and shall have given the company a notice in writing of that fact.

ARTICLE 6--CHECK-OFF

6.1 Upon receipt of voluntary authorization in writing by any employee covered by this agreement, the company will make deductions from the employee's wages for union initiation fees, montly membership dues, and assessments. These deductions will be in amounts designated to the company in writing by the International Secretary-Treasurer of the union in accordance with the constitution of the international union.

6.3 The company will deduct the foregoing authorized amounts on the first pay day in the month for the preceding month. When an employee quits, is discharged or is laid off, any of the foregoing amounts due for either the preceding or current month will be deducted from the last pay payable.

17. Since on or about January 19, 1973, and at all times material herein, Lithographers, the recognized representative of Respondent's Lithographic production employees employed at its Jersey City plant, have continued to demand recognition for Respondent's Lithographic production employees employed at its Edison, New Jersey plant.

18. On or about October 1, 1973, Respondent recognized Steelworkers as the majority representative of its Lithographic production employees at its Edison plant and included them within the collective bargaining agreement described above in paragraphs 15 and 16.

19. At the time of the events described above in paragraphs 14 through 18, until on or about December 1, 1973, Respondent employed no Lithographic production employees at its Edison plant.

20. All Lithographic production employees employed at Respondent's Edison plant, but excluding all "hourly rate" production and maintenance employees, office clerical employees, professional employees, confidential employees, managerial employees, watchmen, guards and all supervisors as defined in the Act, consitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

21. On or about October 1, 1973, Respondent entered into an agreement which provided that Respondent's Lithographic production employees employed at its Edison plant be included in the production and maintenance unit represented by Steelworkers and covered by the collective bargaining agreement described above in paragraphs 15 and 16 notwithstanding that Respondent did not, at that time, employ Lithographic production employees at its Edison plant and notwithstanding that Lithographers had demanded recognition to represent such employees.

22. On or about October 12, 1973, at its Jersey City plant, Respondent, by its Plant Manager, Larry Marifjerin, and its Personnel Manager, Al Reese, urged and solicited Lithographic production employees employed in its Jersey City plant to join Steelworkers and required them to do so as a condition of being transferred to the Respondent's Edison plant.

23. On or about September 22, 1973, Respondent did lay off Charles Amorese, its employee employed at its Jersey City plant.

24. On or about October 12, 1973, Respondent, by its Plant Manager, Larry Marifjerin, did refuse to transfer Charles Amorese, Julian Poznanski, Ed Lemke, George Grupe, Robert Rizzardi and certain other Lithographic production employees referred to

above in paragraph 22, who were employed at its Jersey City plant to substantially equivalent positions at its Edison plant.

25. Since the date referred to above in paragraph 24, Respondent has failed and refused, and continues to fail and refuse, to transfer said employees to substantially equivalent positions of employment at its Edison plant.

26. Respondent did refuse to transfer and has failed and refused, and continues to fail and refuse to transfer the employees referred to above in paragraphs 22 through 25, to substantially equivalent positions of employment at its Edison plant because said employees refused to join or assist Steelworkers.

27. Since on or about January 19, 1973, and at all times material herein to date, Respondent did refuse and continues to refuse to recognize and bargain collectively with Lithographers as the exclusive collective bargaining representative of its employees in the unit described above in paragraph 20.

28. Since on or about December 1, 1973, and continuing to date, Lithographic production employees of Respondent at its Edison plant have been and are now required to pay, and have paid and are now paying, monies to Steelworkers, including but not limited to initiation fees and dues, as a condition of employment and continued employment by Respondent pursuant to the provisions of the agreement described above in paragraphs 15, 16 and 21.

29. By the acts described above in paragraphs 18, 19, 21, 22 and 28, and by each of said acts, in the context of events described above in paragraphs 9 through 17 and 20, Respondent did render and is now rendering unlawful assistance and support

to Steelworkers and Respondent thereby did engage in, and is now engaging in, unfair labor practices within the meaning of Section 8(a)(2) of the Act.

30. By the acts described above in paragraphs 18, 19, 21, 22, 24 through 26, and 28, and by each of said acts in the context of events described above in paragraphs 9 through 17 and 20, Respondent did discriminate and is now discriminating in regard to the hire, tenure and other terms and conditions of employment of Charles Amorese, Julian Poznanski, Ed Lemke, George Grupe, Robert Rizzardi and others of its Lithographic production employees and applicants for employment, thereby encouraging membership in Steelworkers and discouraging membership in Lithographers and Respondent thereby did engage in and is now engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

31. By the acts described above in paragraphs 18, 19, 21, 22 and 24 through 28, and by each of said acts, in the context of events described above in paragraphs 9 through 17, and 20, Respondent did refuse, and is now refusing to bargain collectively with Lithographers, the representative of its employees, and Respondent thereby did engage in, and is now engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

32. By the acts described above in paragraphs 18, 19, 21, 22 and 24 through 31, and by each of said acts, in the context of events described above in paragraphs 9 through 17, and 20, Respondent did interfere with, restrain and coerce, and is now interfering with, restraining and coercing, its employees and applicants for employment in the exercise of the rights guaranteed to them in Section 7 of the Act, and Respondent thereby did engage in, and is now engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

33. The activities of Respondent, described above in paragraphs 18, 19, 21, 22 and 24 through 32, occurring in connection with the operations of Respondent described above in paragraphs 2 through 5, have a close, intimate and substantial relation to trade, traffic

and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, and constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (2), (3), and (5), and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 29th day of April, 1974, at 11 a.m., E.D.T. in Room 1600 at 970 Broad Street, Newark, New Jersey 07102, a hearing will be conducted before a duly designated Administrative Law Judge of the Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person or otherwise and give testimony. Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

PLEASE TAKE FURTHER NOTICE that on the 16th day of April, 1974, at 12 Noon E.D.T. in Room 1600 at 970 Broad Street, Newark, New Jersey, a prehearing conference will be conducted by a duly designated Administrative Law Judge of the Board.

You are further notified that, pursuant to Section 102.20 and Section 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from service thereof, and that, unless it does so, all of the allegations contained in the Complaint shall be deemed to be admitted to be true and may be so found by the Board. Immediately upon the filing of Answer, Respondent shall serve a copy thereof on each of the other parties.

WHEREFORE, the General Counsel of the Board, on behalf of the Board, by the Regional Director for the Twenty-second Region, on this 25th day of March, 1974, issues this Order Consolidating Cases, Complaint and Notice of Hearing against American Can Company, Respondent herein.

Arthur Eisenberg
Regional Director
National Labor Relations Board
Twenty-Second Region
970 Broad Street
Newark, New Jersey 07102

EXHIBIT GC-2

NOTICE TO SHOW CAUSE

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SECOND REGION

AMERICAN CAN COMPANY

Employer

and

Case No. 22-RC-5853

UNITED STEELWORKERS OF
AMERICA, AFL-CIO

Petitioner

NOTICE TO SHOW CAUSE

A Stipulation for Certification Upon Consent Election was executed in the above-entitled proceeding and approved by the undersigned on September 10, 1973. Thereafter, pursuant to the provisions of said agreement an election was conducted on September 21, 1973, in a unit composed of all hourly rate production and maintenance employees employed by the Employer at its Regency plant, located on Pierson Avenue, Edison, New Jersey, but excluding office clerical employees, professional employees, confidential employees, managerial employees, watchmen, guards and supervisors as defined in the Act. Following the election, a tally of ballots was duly served upon the parties showing that of 84 valid votes cast in the election, 84 were for and none were against the Petitioner. Thereafter, on October 1, 1973, the undersigned issued a Certification of Representative certifying that, pursuant to the provisions of Section 9(a) of the Act, the Petitioner was the exclusive representative of the above-described unit of employees for the purposes of collective bargaining.

On March 25, 1974, pursuant to charges filed against the Employer by Local One, Amalgamated Lithographers of America, in Cases Nos. 22-CA-5619 and 22-CA-5803, after an administrative investigation, the undersigned issued a Complaint and Notice of Hearing alleging, inter alia, that the Respondent violated Sections 8(a)(1)(2)(3) and (5) of the Act by recognizing the Petitioner as the representative of its lithographic production employees employed at its:

Edison, New Jersey, plant at a time when the Petitioner did not represent a majority of the lithographic employees and at a time when the Employer was obligated to recognize Local One, Amalgamated Lithographers of America.

The undersigned, having duly considered this matter, noting particularly that at the time the Petitioner was certified, the Employer employed no lithographic production employees at its Edison plant and it therefore appearing that substantial and material issues have been raised with respect to the composition of the certified bargaining unit in this matter; now, therefore,

NOTICE IS HEREBY GIVEN that the parties show cause in writing, filed with the undersigned Regional Director on or before April 3, 1974 (with affidavit of due service of copies upon the parties to this proceeding), why the Certification of Representative heretofore issued in this matter should not be amended to specifically exclude from the appropriate bargaining unit all lithographic production employees employed at the Edison, New Jersey plant. The parties should also, in writing, show cause why this matter should not be consolidated with the above referred to unfair labor practice proceeding for determination by an Administrative Law Judge of the National Labor Relations Board.

Signed at Newark, New Jersey, this 26th day of March, 1974.

Arthur Eisenberg

Arthur Eisenberg, Regional Director
National Labor Relations Board
Twenty-second Region
970 Broad Street
Newark, New Jersey

EXHIBIT GC-3

LETTER DATED JANUARY 19, 1973 FROM EDWARD HANSEN TO L. L. MARIFJEREN

January 19, 1973

Mr. L. L. Marifjeren, Plant Manager
American Can Company
317 St. Pauls Avenue
Jersey City, N.J. 07306

Dear Mr. Marifjeren:

Your "Notice to All Employees" dated December 20, 1972 has come to our attention. The notice announced that the Hudson Plant will cease operations by August 31, 1973 and that a "new can manufacturing facility will be opened in Edison Township."

As an overwhelming majority of the employees whom we represent have signified to us their desire to work at the Edison Plant and to continue to be represented by us, we will expect you to continue to recognize Local One as the collective bargaining agent of your lithographic employees.

We are taken aback that you did not see fit to advise us of this development and give us the opportunity to discuss it with you.

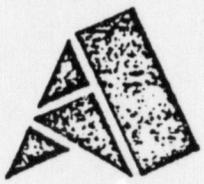
Very truly yours,

Edward Hansen, Executive
Vice President

EH:gm
cc: Mr. John Crespy
Mr. William Lesser

EXHIBIT GC-4

LETTER DATED JANUARY 30, 1973 FROM LESTER L. COOPER, JR. TO EDWARD HANSEN



American Can Company

Lester L. Cooper, Jr.
Assistant Employee Relations Counsel
Corporate Employee Relations

American Lane
Greenwich, Connecticut 06830
203-552-2603

January 30, 1973

Mr. Edward Hansen, Executive Vice President
Amalgamated Lithographers of America, Local One
113 University Place
New York, N. Y.

Dear Mr. Hansen:

The Company has referred to me your January 19 letter to Mr. Marifjeren. I had previously reviewed the question of whether the Company was obliged to recognize your union as the collective-bargaining representative of any lithographic employees it might employ at its contemplated Edison Township plant and had concluded that it was not, since the contemplated plant will not be a relocation of our Hudson Plant but an entirely new operation, so that the Company's collective-bargaining agreement with your union covering the lithographic employees at Hudson Plant will not follow the Company to the contemplated plant. I had so advised management and it was no doubt on the basis of that advice that Mr. Marifjeren did not discuss the contemplated plant with any representative of your union.

If you believe my conclusion to be erroneous, I would welcome hearing you state the details of your position.

Very truly yours,

Lester L. Cooper, Jr

LLC:jb

EXHIBIT GC-5

LETTER DATED MARCH 7, 1973 FROM EDWARD HANSEN TO LESTER L. COOPER, JR.

March 7, 1973

Lester L. Cooper, Jr., Esq.
Assistant Employee Relations Counsel
American Can Company
American Lane
Greenwich, Conn. 06830

Dear Mr. Cooper:

We have carefully considered your letter of January 30, 1973. We believe the failure of the Company to bargain with us regarding the projected closing down of the Hudson Plant and the move to Edison to be a violation of the Company's obligations to us as the collective bargaining agent of the Hudson plant lithographic production employees. Your characterization of the situation as not involving a relocation of the Hudson plant, but, as you put it, "an entirely new operation", hardly alters the fact that the employees whom we represent are directly and drastically affected by the projected move and that we as the bargaining agent should, at the very least, have been informed of the decision so as to have been in a position to bargain for employees in the unit affected by the decision.

Quite apart from the legal considerations involved, our long time relationship would seem to have called for more consideration on your part.

Be that as it may, we do not see that "an entirely new operation" will be involved in the new plant so far as the lithographic operations are concerned. Unless you plan to decorate your containers by some other process, we see nothing more involved than the transfer of the lithographic operation to another plant where the same lithographic skills will be employed on substantially the same lithographic equipment.

We expect that you will take to the new plant as many of the lithographic employees now employed in the Hudson plant as

Lester L. Cooper, Jr.,Esq. March 7, 1973

are willing to go. Judging from the number who have already indicated their desire to work in the new plant, we will continue to speak for a majority of the lithographic unit. In view of the foregoing, we will expect you to negotiate a new contract with us to replace the contract expiring May 1, 1973.

Very truly yours,

Edward Hansen,
Executive Vice President

EH:gm
oeiu: 153

cc: Mr. William Lesser

EXHIBIT GC-6

LETTER DATED MARCH 9, 1973 FROM LESTER L. COOPER, JR. to EDWARD HANSEN

American Can Company

Lester L. Cooper, Jr.
Assistant Employee Relations Counsel
Corporate Employee Relations

American Lane
Greenwich, Connecticut 06830
203—552-2603

March 9, 1973

Mr. Edward Hansen, Executive Vice President
Local 1, Amalgamated Lithographers of America
113 University Place
New York, N. Y. 10003

Dear Mr. Hansen:

I am somewhat confused by your letter of March 7, but let me say this:

1. I do not believe that the Company has any duty to bargain with your Union regarding whether or not to close Hudson Plant or whether or not to open a new plant.

2. I believe that the Company has already satisfied, for the period of the current collective-bargaining agreement, whatever duty it may have to bargain with your Union regarding the effects of the closing of Hudson Plant on the employees your Union represents. Of course, since Hudson Plant will be open when the current collective-bargaining agreement expires, the Company will bargain with your Union for a successor agreement covering, among other locations, Hudson Plant.

3. I do not believe that your Union has established any right to represent any employees at our to-be-opened Regency Plant in Edison, New Jersey.

4. The Company will consider any applicant for employment at Regency Plant on a non-discriminatory basis. That includes the persons your Union represents. There is, however, no basis for any expectation that the Company will automatically "take to the new plant as many of the lithographic employees now employed in the Hudson Plant as are willing to go."

I get the impression from your previous correspondence that you do not altogether subscribe to my views. If you think there might be some value in discussing these matters further, you might want to have your attorney get in contact with me.

Very truly yours,

Lester L. Cooper, Jr.

LC:jb

EXHIBIT GC-7

COLLECTIVE BARGAINING AGREEMENT
DATED APRIL 11, 1973 BETWEEN
AMERICAN CAN COMPANY and LOCAL 1,
AMALGAMATED LITHOGRAPHERS OF AMERICA

Preamble
Article 1
Article 2
Article 10

AGREEMENT

THIS AGREEMENT is made and entered into on April 11, 1973 by and between:

The American Can Company, a duly authorized corporation of New Jersey (hereinafter referred to as "the Company") on behalf of itself and each of its respective local operating units identified as follows:

Hudson Plant, located at 317 St. Pauls Avenue, Jersey City, N.J.

Hillside Plant, located at 600 North Union Avenue, Hillside, N.J.

Hoboken Plant, located at 12th & Hudson Streets, Hoboken, N.J.

and

Local 1, Amalgamated Lithographers of America (hereinafter referred to as "the Union").

WHEREAS,

It is the intention and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationships between the Company and the employees and to set forth herein the basic agreement to be observed by the parties hereto.

NOW, THEREFORE,

The parties hereto are mutually agreed as follows:

ARTICLE 1 - DEFINITION

1.1 The term "employee" as used in this Agreement shall include all lithographic and production employees as set forth in the "Minimum Wage Scale" attached hereto as Appendix A.

ARTICLE 2 - RECOGNITION

2.1 The Company recognizes the Union as exclusive representative of all lithographic production employees as identified in Appendix A or subsequently agreed to for the purpose of collective bargaining in respect to wages, hours of work and other conditions of employment.

The Company shall follow the same union security practices as agreed upon for 1973-1976 between the Union and the Company of the majority of the members of the Union in the New York Metropolitan Area, insofar as the observance of such practices at the plants covered by this Agreement are in accordance with provisions of applicable federal and state laws.

The Employer and the Union agree that there shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex or national origin in respect to, but not limited to (a) hiring, placement, upgrading, lay-off, transfer or demotion, (b) rates of pay or other conditions of work and (c) selection for training including apprenticeship.

* * *

ARTICLE 10 - MANAGEMENT

10.1 The management of the plant and the direction of the working forces is vested exclusively in the Company and includes but is not limited to the right to hire, to promote, or to discharge for proper causes and to relieve employees from duty because of lack of work or other legitimate reasons.

The Company, in exercising its right, will observe the provisions of this Agreement.

EXHIBIT GC-8

LETTER DATED MARCH 4, 1974 FROM JAMES F. GILL to AMERICAN CAN COMPANY

ROBINSON, SILVERMAN, PEARCE, ARONSOHN, SAND & BERMAN
230 PARK AVENUE
NEW YORK, N. Y. 10017
(212 MU 9-7766
CABLE: "ROSILPE"

WASHINGTON OFFICE
[illegible] 16TH STREET, N.W.
WASHINGTON, D.C. 20006
(202) 296-7272

*MEMBER WASHINGTON, D.C. BAR ONLY

JAMIN M. ROBINSON
THEW SILVERMAN
L PEARCE
N J B ARONSOHN
NARD B SAND
RENCE A SPELMAN
NLEY BERMAN
VIN G CALLAHAN*
IS R RASTER
VARD B SCHOEN
ES F GILL
RDON J FINGAR
HAEL N ROSEN
NILES M KOTICK
THUR W BRILL
N S PEARCE
VARD SUSSMAN
VEN M GOLDMAN
DREW S BERKMAN
WI_AMOWSKY
LIP J HEYMAN
EDERIC H. MAYERSON
IOTT D. HEFLER
WARD S. WACTLAR

March 4, 1974

American Can Company
3 Kilmer Road
Edison, New Jersey

Gentlemen:

As you are aware, we represent Local One, Amalgamated Lithographers of America.

As you are also aware, it is the position of Local One that the contract currently in existence and covering lithographic production employees at the plant located in Jersey City, New Jersey also covers lithographic production employees employed at the plant located in Edison Township, New Jersey.

It has come to our attention that you now have in your employ four lithographic production employees, namely, James Dennison, Michael Fitzpatrick, Gary Weiler and John Gostowski.

We hereby request that you recognize Local One as the collective bargaining representative of the aforementioned employees and further request that you advise us whether or not it is your intention to abide by the terms of the aforementioned collective bargaining agreement with respect to such employees.

Very truly yours,

JAMES F. GILL

JFG:sg

c.c. Messrs. Edward Swayduck
Edward Hansen
Allen Olmstead
American Can Company, Jersey City, New Jersey
National Labor Relations Board, Region 22

EXHIBIT GC-9

STATEMENT SIGNED BY LITHOGRAPHERS
EMPLOYED BY AMERICAN CAN COMPANY

TO WHOM IT MAY CONCERN:

The undersigned employees employed by The American Can Company at the Hudson Plant, represented by Local One, Amalgamated Lithographers of America desire to work at the Company's plant in Edison Township and to continue to be represented by Local One, A.L.A.

NAME	CLASSIFICATION
Edward [illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]

EXHIBIT GC-10

NOTICE TO ALL EMPLOYEES
DATED DECEMBER 20, 1972

340a

American Can Company

L. L. Marifjeren
Plant Manager

317 St. Pauls Avenue
Jersey City, New Jersey 07306

DECEMBER 20, 1972

NOTICE TO ALL EMPLOYEES

THE AMERICAN CAN COMPANY WILL ANNOUNCE TODAY ITS DECISION TO OPEN A NEW CAN MANUFACTURING FACILITY IN EDISON TOWNSHIP, NEW JERSEY. AT FULL PRODUCTION THIS NEW PLANT WILL EMPLOY APPROXIMATELY 250 PEOPLE.

ALL MANUFACTURING OPERATIONS AT HUDSON PLANT WILL CEASE BY AUGUST 31, 1973.

THOSE HUDSON PLANT EMPLOYEES WHO WANT TO BE CONSIDERED FOR EMPLOYMENT AT THIS NEW PLANT SHOULD IMMEDIATELY MAKE APPLICATION IN THE EMPLOYEE RELATIONS DEPARTMENT.

L. L. MARIFJEREN
PLANT MANAGER

EXHIBIT GC-11A

LETTER DATED SEPTEMBER 20, 1973 FROM
A. OLMSTEAD TO ACTING REGIONAL DIRECTOR,
NATIONAL LABOR RELATIONS BOARD

341a

LOCAL 1, AMALGAMATED LITHOGRAPHERS OF AMERICA

Founded 1882 • 115 UNIVERSITY PLACE, NEW YORK, N.Y. 10003 • Telephone [illegible]

Office of the Director of Organizing-Financial Secretary ALLEN OLMSTEAD

September 20, 1973

Mr. Arthur Eisenberg
Acting Regional Director
Newark NLRB
Board 22nd Region
970 Broad Street
Newark, New Jersey

JUST LEARNED OF REPRESENTATION ELECTION SCHEDULED FOR SEPTEMBER 21st AT AMERICAN CAN, PIERSON AVENUE, EDISON NEW JERSEY. WE OBJECT TO ANY INCLUSION OF LITHOGRAPHIC WORKERS IN WHOM WE HAVE AN INTEREST AND WHO DO NOT PROPERLY BELONG IN PLANT WIDE UNIT.

A. Olmstead

A. Olmstead
Director of Organizing-
Financial Secretary

DELIVERED BY HAND

EXHIBIT GC-12

PETITION FOR REPRESENTATION
AND NOTICE OF REPRESENTATION
HEARING

342a

Form Approved
Budget Bureau No. 64-R0181.1

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

PETITION

DO NOT WRITE IN THIS SPACE

Case No. 22-RC-5053

Date Filed August 22, 1977

INSTRUCTIONS.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of Petition shall not be deemed made.)

(Check one)

- ☐ RC-CERTIFICATION OF REPRESENTATIVE—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- ☐ RM-REPRESENTATION (EMPLOYER PETITION)—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- ☐ RD-DECERTIFICATION—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ UC-UNIT CLARIFICATION—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees. (Check one) ☐ In unit not previously certified. ☐ In unit previously certified in Case No. _____.
- ☐ AC-AMENDMENT OF CERTIFICATION—Petitioner seeks amendment of certification issued in Case No. _____.

Attach statement describing the specific amendment sought.

2. NAME OF EMPLOYER: American Can Company — AREA REPRESENTATIVE TO CONTACT: — PHONE NO.:

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED (Street and number, city, State, and ZIP Code): W.R. Grace Park, Pierson Avenue Edison, New Jersey 08817

4a. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.): Factory

4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE: Can ends

5. Unit Involved (In UC, describe present bargaining unit and describe proposed clarification. In RM, RD, and AC, describe unit found appropriate or proposed certification.)

Included:

All production and maintenance employees including lithographers.

Excluded:

All office clerical employees, guards, watchman and supervisors

5a. Number of Employees in Unit:
PRESENT _____
PROPOSED (by UC/AC) _____

5b. Is This Petition Supported by 30% or More of the Employees in the Unit?* ☐ YES ☐ NO

*Not applicable to RM, UC, and AC

(If you have checked box RC in 1 above, check and complete 7a or 7b, whichever is applicable.)

7a. ☐ Request for recognition as Bargaining Representative was made on August [illegible] (Month, Day, Year) and Employer declined recognition on or about No Reply (If no reply received, so state) (Month, Day, Year)

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME: None — AFFILIATION:

ADDRESS: — DATE OF RECOGNITION OR CERTIFICATION:

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY (Show month, day, and year): None

10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP (Month, Day, and year)

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED? YES ..... NO ...X...

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF ..... (Insert name) A LABOR ORGANIZATION, OF ..... (Insert address) SINCE ..... (Month, Day, Year)

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (IF NONE, SO STATE.)

NAME	AFFILIATION	ADDRESS	Date Of Claim (Completed only if Petition is filed by Employer)
None			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

United Steelworkers of Americ AFL-CIO
(Petitioner and affiliation, if any)

By [illegible] Attorneys at Defendance
(Signature of representative or person filing petition) (Title, if any)

343a

FORM NLRB-852
(4-72)

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Twenty-second Region

AMERICAN CAN COMPANY

Employer

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO

Petitioner

Case No. 22-RC-8153

NOTICE OF REPRESENTATION HEARING

The Petitioner, above named, having heretofore filed a Petition pursuant to Section 9(c) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151 et seq., copy of which Petition is hereto attached, and it appearing that a question affecting commerce has arisen concerning the representation of employees described by such Petition,

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, on the 11th day of September, 19 73 at 10 a.m., Room 1600, Federal Building, 970 Broad Street, Newark, New Jersey,

a hearing will be conducted before a hearing officer of the National Labor Relations Board upon the question of representation affecting commerce which has arisen, at which time and place the parties will have the right to appear in person or otherwise, and give testimony.

Signed at Newark, N. J. on the 30th day of August, 19 73.

Acting Regional Director, Region
National Labor Relations Board

FORM NLRB 4669 ATTACHED

GPO 861-497

Any request for an extension of time made after the close of the hearing must be received by the Regional Director not later than 3 days before the date the briefs are due. Such request must be in writing and copies must be served immediately upon each of the other parties.

2. Briefs filed with the Board in Washington, D. C.

a. If transfer of case to Board is announced at the hearing:

Eight copies of a brief, legibly printed or mimeographed, double-spaced, must be filed with the Board in Washington, D. C. Carbon copies of typewritten matter will not be filed and if submitted will not be accepted. A copy must also be served upon each of the other parties. Proof of such service must be filed with the Board simultaneously with the briefs.

The briefs shall be filed within 7 days after the close of hearing unless an extension of time is granted by the hearing officer. As to any extension of time requested at the hearing, the hearing officer is empowered to grant an extension not to exceed an additional 14 days upon request made for good cause.

Any request for an extension of time made after the close of hearing must be received by the Board in Washington not later than 3 days before the date the briefs are due. Such requests must be in writing and copies must be served immediately upon each of the other parties.

b. Transfer of case to Board effected after close of hearing:

Pursuant to Section 102.67 of the Board's Rules and Regulations, the Regional Director may at any time after the close of hearing and before decision, transfer a case to the Board for decision. The order transferring the case will fix a date for filing briefs in Washington.

If briefs have already been filed with the Regional Director, the parties may file 8 copies of the same brief with the Board in the same manner as set forth in "a" above, except that service on the other parties is not required. No further briefs shall be submitted except by special permission of the Board.

If the case is transferred to the Board before the time expires for filing of briefs with the Regional Director and before the parties have filed briefs, such briefs shall be filed as set forth in "a" above.

Requests for extension of time shall be received by the Board not later than 3 days before the date such briefs are due in Washington, D. C. A copy of any such request shall be served immediately on each of the other parties and the Regional Director and shall contain a statement that such service has been made. No reply brief may be filed except upon special leave of the Board.

GPO 874-642

Form NLRB-4669
(1-68)

(R Cases)

STATEMENT OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD PURSUANT TO PETITIONS FILED UNDER SECTION 9 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted before a hearing officer of the National Labor Relations Board.

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. After the close of the hearing, one or more of the parties may wish to have corrections made in the record. All such proposed corrections, either by way of stipulation or motion, should be forwarded to the Regional Director or to the Board in Washington (if the case is transferred to the Board) instead of to the hearing officer, inasmuch as the hearing officer has no power to make any rulings in connection with the case after the hearing is closed. All matter that is spoken in the hearing room will be recorded by the official reporter while the hearing is in session. In the event that any of the parties wish to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter.

Statements of reasons in support of motions or objections should be as concise as possible. Objections and exceptions may upon appropriate request be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

Five copies of all pleadings submitted during the hearing are to be filed with the hearing officer.

The sole objective of the hearing officer is to ascertain the respective positions of the parties and to obtain a full and complete factual record upon which the duties under Section 9 of the National Labor Relations Act may be discharged by the Regional Director or the Board. It may become necessary for the hearing officer to ask questions, to call witnesses, and to explore avenues with respect to matters not raised by the parties. The services of the hearing officer are equally at the disposal of all parties to the proceedings in developing the material evidence.

After close of hearing, any party who desires to file a brief may do so in the appropriate manner described below.

1. Briefs filed with the Regional Director:

Unless transfer of the case to the Board is announced prior to close of hearing, the brief should be filed in duplicate with the Regional Director. A typed brief with a carbon copy is acceptable. A copy must also be served upon each of the other parties and proof of such service must be filed with the Regional Director at the time the briefs are filed.

The briefs shall be filed within 7 days after the close of the hearing unless an extension of time is granted by the hearing officer. As to any extension of time for filing briefs, the hearing officer is empowered to grant an extension not to exceed an additional 14 days upon request made before the hearing closes and for good cause.

EXHIBIT GC-13

STIPULATION FOR CERTIFICATION
UPON CONSENT ELECTION

FORM NLRB-652
(5-72)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION

Pursuant to a Petition duly filed under Section 9 of the National Labor Relations Act, as amended, and subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), the undersigned parties hereby AGREE AS FOLLOWS:

1. SECRET BALLOT.—An election by secret ballot shall be held under the supervision of the said Regional Director, among the employees of the undersigned Employer in the unit defined below, at the indicated time and place, to determine whether or not such employees desire to be represented for the purpose of collective bargaining by (one of) the undersigned labor organization(s). Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the applicable procedures and policies of the Board.

2. ELIGIBLE VOTERS.—The eligible voters shall be those employees included within the Unit described below, who were employed during the payroll period indicated below, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and employees in the military services of the United States who appear in person at the polls. Also eligible are employees engaged in an economic strike which commenced less than twelve (12) months before the election date and who retained their status as such during the eligibility period and their replacements, but *excluding* any employees who have since quit or been discharged for cause and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated prior to the date of the election, and employees engaged in an economic strike which commenced more than twelve (12) months prior to the date of the election and who have been permanently replaced. At a date fixed by the Regional Director, the parties, as requested, will furnish to the Regional Director, an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

3. NOTICES OF ELECTION.—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The parties, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

4. OBSERVERS.—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally.

5. TALLY OF BALLOTS.—As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to each of the parties.

6. POST-ELECTION AND RUN-OFF PROCEDURE.—All procedure subsequent to the conclusion of counting ballots shall be in conformity with the Board's Rules and Regulations.

7. RECORD.—The record in this case shall be governed by the appropriate provisions of the Board's Rules and Regulations and shall include this stipulation. Hearing and notice thereof, Direction of Election, and the making of Findings of Fact and Conclusions of Law by the Board prior to the election are hereby expressly waived.

8. COMMERCE.—The Employer is engaged in commerce within the meaning of Section 2(6) of the National Labor Relations Act, and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c). *(Insert commerce facts.)*

The Employer a New Jersey Corporation, with place of business on Pierson Ave., Edison, New Jersey, is engaged in the production and sale of pressure cans. During the preceding 12 months, the Employer purchased materials valued in excess of $50,000 directly from suppliers outside the State of New Jersey.

9. WORDING ON THE BALLOT.—Where only one labor organization is signatory to this agreement, the name of the organization shall appear on the ballot and the choice shall be "Yes" or "No." In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot, or if the occasion demands, from top to bottom. *(If more than one union is to appear on the ballot, any union may have its name removed from the ballot by the approval of the Regional Director of a timely request, in writing, to that effect.)*

First.

Second.

Third.

10. PAYROLL PERIOD FOR ELIGIBILITY.— Payroll period ending September 9, 1973.

11. DATE, HOURS, AND PLACE OF ELECTION.— Friday, September 21, 1973 from 6:30 - 7:30 a.m. and 3:00 - 4:00 p.m. in the cafeteria on the Employer's premises at ~~W. R. Grace Park, Pierson Ave.,~~ Edison, N. J. or at any other time, date and place as the Regional Director may designate.

12. THE APPROPRIATE COLLECTIVE BARGAINING UNIT.—

All hourly rate production and maintenance employees employed by the Employer at its Regency plant located on Pierson Ave., Edison, New Jersey, but excluding office clerical employees, professional employees, confidential employees, managerial employees, watchmen, guards and supervisors as defined in the Act.

If Notice of Representation Hearing has been issued in this case, the approval of this stipulation by the Regional Director shall constitute withdrawal of the Notice of Representation Hearing heretofore issued.

AMERICAN CAN COMPANY
W. R. GRACE PARK
(Employer)

PIERSON AVE., EDISON, NEW JERSEY
(Address)

By ....
(Name and Title) (Date)

LESTER COOPER, JR., ASST. EMPLOYEE RELATIONS COUNSEL
Recommended:

....
(Board Agent) (Date)

PHYLLIS SCHECHTMAN

Date approved .....

.....
ACTING Regional Director,
National Labor Relations Board.

Case No. 22-RC-5853

UNITED STEELWORKERS OF AMERICA, AFL-CIO
(Name of Organization)

1020 GALLOPING HILL RD., UNION, NEW JERSEY
(Address)

By ....
(Name and Title) (Date)

ABRAHAM FRIEDMAN, ATTORNEY

.....
(Name of other Organization)

.....
(Address)

By ....
(Name and Title) (Date)

EXHIBIT GC-14

CERTIFICATION OF REPRESENTATIVE
DATED October 1, 1973

FORM NLRB-4279
(3-72)

RC-RN-RD

348a

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

AMERICAN CAN COMPANY

Employer

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO

Petitioner

TYPE OF ELECTION

(Check one)

- ☐ Consent Agreement
- ☒ Stipulation
- ☐ Board Direction
- ☐ RD Direction

(Also check box below where appropriate)

- ☐ 8(b)(7)

Case No. 22-RC-5853

RECEIVED

OCT 04 1973

A. C. MUSE

CERTIFICATION OF REPRESENTATIVE

An election having been conducted in the above matter under the supervision of the Regional Director of the National Labor Relations Board in accordance with the Rules and Regulations of the Board; and it appearing from the Tally of Ballots that a collective bargaining representative has been selected; and no objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefor;

Pursuant to authority vested in the undersigned by the National Labor Relations Board, IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for **UNITED STEELWORKERS OF AMERICA, AFL-CIO**

and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

UNIT: **All hourly rate production and maintenance employees employed by the Employer at its Regency plant located on Pierson Avenue, Edison, New Jersey, but excluding office clerical employees, professional employees, confidential employees, managerial employees, watchmen, guards and supervisors as defined in the Act.**

Signed at **Newark, New Jersey**
On the **1st** day of **October** 19 **73**

On behalf of

NATIONAL LABOR RELATIONS BOARD

/s/ Arthur Eisenberg

Regional Director, Region

EXHIBIT GC-18

LETTER DATED OCTOBER 3, 1973 FROM
J. BULY TO WILLIAM MORAN

American Can Company

American Lane
Greenwich, Connecticut 06830

J. Buly, Employee Relations Director
Packaging - Food, Beverage and
American Can of Canada, Ltd.

October 3, 1973

Mr. William Moran, Director
United Steelworkers of America, Dist. #9
1330 Center Street
Bethlehem, Pennsylvania 18018

Dear Mr. Moran:

This will confirm our understanding that Appendix A(1) to the Agreement dated February 15, 1971, "Regions for Preferential Employment," shall be revised to include the following Plant which became covered by the Agreement subsequent to February 15, 1971:

REGION	PLANT	LOCATION
New York	Regency	Edison Township, N. J.

Yours very truly,

J. Buly

JB:drc

CONFIRMED:

William Moran

William Moran, Director - USWA Dist #9

(P)

CEIVED

11 1973

EXHIBIT R-4

LETTER TO EMPLOYEES DATED AUGUST 8, 1972

American Can Company

August 8, 1972

Dear Fellow Employee:

The American Can Company is announcing the shutdown or consolidation of business of nine canmaking plants today, along with plans to sell two domestic U.S. pulp and paper mills and our Marathon Canada pulp operations.

I am sorry to have to inform you that Hudson Plant is one of the can plants to be shut down. All of the affected can plants are scheduled to cease operations within 18 months. Our schedule will be announced within two months. By the time of closing, our remaining business will have been absorbed by other American Can Company locations. The plants, other than Hudson, which are shutting down or phasing out operations are, Portland (Maine); Tampa; Maywood, Ill.; Seattle; San Francisco (Pacific); Los Angeles; Honolulu, and Chatham, Ontario. The pulp and paper mills which are being sold are Rothschild, Wis.; Menominee, Mich.; and Marathon, Ontario, Canada.

For everyone here at Hudson Plant who is eligible for retirement and who retires under the salaried or hourly plans, the provisions applicable to plant closings will be in effect.

Each of you who is now eligible for benefits under either our salaried programs or labor agreements and who is not employed on other work with the company, will receive the benefits provided therein. Any options of weekly benefits or severance benefits that you may have will be discussed individually with you as will any benefits available under existing pension or retirement plans. Any such employee laid off from now on will, of course, receive in the regular way any benefits for which he is eligible.

We know that all of you will need time to get yourselves adjusted to your best personal advantage. We want to make it clear that if any of you wish to resign to accept other employment prior to the time we no longer have work available to you, your resignation will not be considered by us as a voluntary quit. No one will be penalized for accepting other employment before the closing date.

Again, I wish to express my appreciation of your efforts, as well as my regret that this action has become necessary. We will be available to answer questions.

Sincerely,

Plant Manager

EXHIBIT R-5

LETTER DATED MAY 21, 1974 FROM
JAMES F. GILL TO AMERICAN CAN
COMPANY

35a

ROBINSON, SILVERMAN, PEARCE, ARONSOHN, SAND & BERMAN
230 PARK AVENUE
NEW YORK, N. Y. 10017
(212) MU 9-7766
CABLE: "ROSILPE"

WASHINGTON OFFICE
910 16TH STREET, N.W.
WASHINGTON, D.C. 20006
(202) 296-7272

*MEMBER WASHINGTON, D.C. BAR ONLY

BENJAMIN M. ROBINSON
MATTHEW SILVERMAN
SAUL PEARCE
ALAN J. S. ARONSOHN
LEONARD B. SAND
LAURENCE A. SPELMAN
STANLEY BERMAN
EDWIN G. CALLAHAN*
LEWIS R. KASTER
EDWARD S. SCHOEN
JAMES F. GILL
JORDON J. FINGAR
MICHAEL N. ROSEN
CHARLES M. KOTICK
ARTHUR W. BRILL
ALAN S. PEARCE
EDWARD SUSSMAN
STEVEN M. GOLDMAN
ANDREW S. BERKMAN
ZVI WILAMOWSKY
PHILIP J. HEYMAN
FREDERIC H. MAYERSON
ELLIOTT D. HEFLER
EDWARD S. WACTLAR

May 21, 1974

American Can Company
317 St. Pauls Avenue
Jersey City, New Jersey 07306

Gentlemen:

Please be advised that we represent Local One, Amalgamated Lithographers of America.

It has come to our attention that you currently have in your employ approximately 24 lithographic production employees at your plant. As you are aware, Local One represents said employees.

We have been informed that the aforementioned employees were advised that their jobs would be phased out by June 28, 1974. It is our position that you are obligated to bargain with Local One relative to the effects of the aforementioned phase out and we hereby demand that you do so.

Very truly yours,

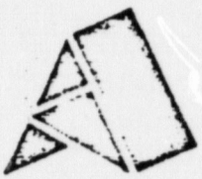
JAMES F. GILL

JFG:sg
c.c. Messrs. Edward Swayduck
Edward Hansen
Allen Olmstead

EXHIBIT
Identified
Rejected
Witness
Reporter

EXHIBIT R-6

LETTER DATED MARY 24, 1974
FROM W. J. LESER TO JAMES
F. GILL



American Can Company

W. J. Leser, Field Administrator
Labor Relations
Employee Relations, Packaging

American Lane
Greenwich, Connecticut 06830

May 24, 1974

James F. Gill, Esquire
Robinson, Silverman, Pearce,
Aronsohn, Sand and Berman
230 Park Avenue
New York City, N. Y. 10017

Dear Mr. Gill:

Your letter dated May 21, 1974, addressed to our plant in Jersey City, has been forwarded to me by Mr. Marifjeren for reply.

It has always been, and still is, the position of American Can that upon request we would be willing to enter into discussions with your client concerning the effects upon its members of the phase-out of lithographic production at our Hudson Plant. While the phase-out is imminent, to my knowledge no actual phase-out date has yet been announced. However, we would still be happy to discuss the entire matter with you as soon as a mutually convenient date can be arranged.

Please call me to arrange a date.

Very truly yours,

W. J. Leser

W. J. Leser

WJL:drc

EXHIBIT R-7

TABLE OF EXEMPT SUPERVISOR ORGANIZATION AND STATUS AS OF AUGUST 1972

HUDSON 017

EXEMPT SUPERVISOR ORGANIZATION AND STATUS

AUGUST 1972

EMP. #	NAME	TITLE	TRANSFER DATE	LOCATION
14710	Adams, W. E.	Coord. Spoilage	5/14/73	Hoopeston
227	Albrecht, C.	Cont. Supv. Pack.-Ship.		
230	Alleva, P.	Shift Supv. Data Proc.		
18604	Annicchero, J.	Supv. Rework	1/1/73	Hillside
233	Arcell, W. J.	Shift Supv. Pack.	6/1/73	Retired
235	Asmussen, R.	Shift Supv. Assembly		
16378	Astolfi, S.	Coord. Emp. Rel.	10/2/72	Riverside
19086	Becker, L.	Foreman - Mech. Ends	10/1/73	Regency
	Bello, M.	Shift Supv. Ship.	5/1/73	Layoff
			12/1/73	Retired
246	Benden, R.	Coord. Schedules	12/24/73	Regency
16312	Boruta, C.	Shift Supv. Ship.	10/1/73	Regency
10254	Cain, E.	Coord. Schedules		
1072	Calabro, S. J.	Plant Supt.		
517	Campbell, B.	Gen. Supv. Qual. Eng.	10/16/72	Ohio
9705	Copeland, J. R.	Foreman - Mech. Pack.	4/15/74	Philadelphia
	Connelly, T.	Gen. Supv. Qual. Eng.	11/1/73	Regency
	Contini	Shift Supv. Ends	4/30/73	Fairport
999	deGraaf, J.	Admin. Eng. Budget		
18959	DeLuca, A.	Foreman - Tinplate	9/16/73	Expired
14711	Demberger, C.	Dept. Supt. Coating	12/24/73	Regency
19342	DeVine, T.	Foreman - Pack.	4/1/73	GHQ
297	Derillo, J.	Foreman - Mech. Ends	9/3/73	Hillside
9345	Drozdik, J.	Coord. Mech. Assembly	4/22/74	Hillside
6829	Egan, G. V.	Gen. Supv. Prod. Cont.	11/16/72	GHQ
312	Feniello, P.	Cont. Supv. Ends	1/1/74	Retired
	Ferraro, L.	Foreman - Assembly	12/3/73	Regency
541	Ferris, R. J.	Supv. Inspection	6/10/73	Disability
321	Fitzgerald, J.	Cont. Supv. Ends	12/1/72	Disability
10140	Fitzpatrick, P.	Plant Ind. Eng.	10/16/72	Hillside
10158	Ford, R.	Coord. Cust. Rel.	10/16/72	Riverside
18620	Glover, M.	Dept. Supv. Assembly	12/3/73	Hillside
	Griffin, G.	Analyst, Cost Acct.	9/15/72	Resigned
549	Greene, J.	Shift Supv. Assembly	10/29/73	Hillside
335	Greiner, A.	Dept. Supv. Assembly		
	Guzowski, S.	Supv. Inspection	12/24/73	Regency
11328	Hunter, D. R.	Supv. Data Proc.	9/4/72	Riverside
8140	Hurley, J.	Supv. Inspection	9/3/73	Regency
8408	Jensen, C.	Instructor Mech.	11/4/73	Disability
9993	Kaluzny, E.	Foreman - Mech. Assembly	12/24/73	Regency
359	Kennedy, V.	Coord. Emp. Rel.	12/24/73	Regency
9467	Kerner, R.	Cont. Supv. Litho - Coat.		
362	Kiernan, G.	Cont. Supv. Eng. Serv.		
364	Kimball, W.	Coord. Spoilage	2/5/73	Hillside

EMP. #	NAME	TITLE	TRANSFER DATE	LOCATION
365	King, R.	Shift Supv. Ship.	3/18/74	Hillside
368	Klink, G.	Foreman - Mech.	2/1/74	Retired
11973	Kolakowski, S.	Foreman - Mech.	10/1/73	Regency
17813	Kreush, J.	Shift. Supv. Coat.	2/26/73	Morrisville
374	Krizan, C.	Foreman - Elect.		Disability
	Kudlacik, W.	Shift Supv. Assembly	2/19/73	Hillside
19981	Liantonio, V.	Foreman - Mech.	9/3/73	Regency
	Lever, J.	Foreman - Litho	4/8/74	Regency
7873	LoPrete, P.	Coord. Mech. Assembly	10/1/73	Regency
386	Lorello, J.	Dept. Supv. Ship.		
	Lovette, P.	Shift Supv. Coat.	1/15/73	Milwaukee
	McCafferty, H.	Coord. Acct.	9/1/72	GHQ
380	McCormick, T.	Dept. Supv. Pack.	10/1/73	Regency
11862	Macey, J.	Shift Supv. Assembly	2/12/73	Hillside
4646	Marifjeren, L.	Plant Manager		Regency
400	Martin, R.	Shift Supv. Q. E.	4/1/73	Retired
19845	Midlam, R.	Cont. Supv. Acct.	8/15/73	Regency
9720	Muller, F.	Mgr. Operations	12/1/73	Philadelphia
21344	O'Brien, J.	Coord. Emp. Rel.	3/19/73	Indianapolis
421	O'Leary, J.	Coord. Safety - Trng.	4/1/74	Regency
423	O'Mara, J.	Coord. Schedules	7/30/73	Hillside
21855	Ortense, A.	Foreman - Litho	6/25/73	Englewood
11925	Parsekian, H.	Dept. Supv.	11/5/73	Regency
21013	Pastrana, R.	Foreman - Mech. Assembly	7/30/73	Puerto Rico
2288	Pentony, D.	Gen. Supv. Acct.		
10453	Pizzulli, J.	Instructor - Mech.	12/3/73	Hillside
16447	Potter, R.	Supv. Inspection	9/4/72	Greensboro
11959	Powell, E.	Supv. Acctg. Serv.	12/3/73	Regency
10001	Ries, H. A.	Gen. Supv. Emp. Rel.	1/1/74	Regency
9632	Rothwell, G.	Dept. Supv. Litho	12/24/73	Regency
9784	Ryan, F.	Cont. Supv. Assembly	1/1/74	Regency
17782	Sasouski, J.	Foreman Litho		
	See, R.	Instructor - Mech.		
9965	Sieminski, P.	Foreman - Machine Shop		
462	Skinner, R.	Supt. Processing	1/1/73	GHQ
7283	Sluka, E.	Dept. Supv. Assembly	12/4/72	Hoboken
629	Smith, L.	Gen. Supv. Prod. Cont.	1/1/74	Regency
19454	Spencer, A.	Foreman - Mech. Litho		
13698	Styne, J.	Shift Supv. Litho	9/17/73	Bellwood
5529	Sudol, R.	Dept. Supv. Tinplate	1/1/74	Retired
475	Sudol, S.	Dept. Supv. Assembly	4/1/74	Retired
1060	Szala, S.	Foreman - Millwright		Expired
11853	Tango, J.	Foreman - Maint.	12/3/73	Tampa
19754	Texas, W.	Foreman - Pack.	9/3/73	Hillside
477	Thompson, H.	Supt. Engineering	1/1/74	GHQ
11382	Thompson, R.	Shift Supv. Eng.		Riverside
9940	Tomlin, R.	Cost Supv.		
479	Toone, W.	Dept. Supv.		

EMP. #	NAME	TITLE	TRANSFER DATE	LOCATION
484	Vermont, W.	Supv. Tinplate		
20992	Wendaur, J.	Shift Supv. Assembly	10/2/72	Riverside
492	Woods, J.	Shift Supv. Assembly	2/1/73	Retired
493	Woods, W.	Dept. Supv. Ends	12/24/73	Regency
19753	Zachman, W.	Shift Supv. - Ship.	2/4/74	Englewood
8224	Zlotkowski, E.	Cont. Supv. Eng.	1/1/74	Regency
20869	Zuraf, W.	Foreman Pack.	4/2/73	Fairport

RECAP AS OF 5/1/74

Total Transferred	65
Total Retired	8
Total Deceased	2
Total Disability	4
Total Remaining	18
Total Resigned	1
GRAND TOTAL	98

3.1 The company recognizes the union as the sole and exclusive collective bargaining agency for all employees working on jobs identified and defined in Appendix A at the respective local operating units set forth in said Appendix, and at such local operating units for which during the term of this agreement it may be certified by the National Labor Relations Board or recognized by the company as the exclusive bargaining representative; and all such employees are referred to whenever the term "employee" is used in this agreement. In applying the provisions of this agreement to local operating units at which the union becomes the recognized or certified bargaining representative in accordance with this section, the parties shall negotiate any necessary accommodation between any prior agreements and this agreement.

* * *

5.2 All employees covered by this agreement who are members of the union in good standing on the effective date of this agreement shall maintain their membership in good standing for the duration of this agreement. All employees who are not members of the union in good standing and all employees hired on or after the effective date of this agreement shall become members of the union within 30 calendar days following the effective date of this agreement or date of employment, whichever is the later, and thereafter shall maintain union membership in good standing for the duration of this agreement. For the purpose of this agreement the term "good standing" is defined to refer only and to be limited to the payment of union membership dues and initiation fees. For the purposes of this section, an employee shall not be deemed to have lost his membership in the union in good standing until the International Secretary-Treasurer of the union shall have determined that the membership of such employee in the union is not in good standing and shall have given the company a notice in writing of that fact.

EXHIBIT S.1

COLLECTIVE BARGAINING AGREEMENT
BETWEEN AMERICAN CAN COMPANY AND
UNITED STEELWORKERS OF AMERICA,
AFL-CIO DATED FEBRUARY 15, 1971

Article 3.1
Article 5.2

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MARIE MULHALL , being duly sworn, deposes and says:

I am over the age of eighteen (18) years and am not a party to this action.

On the 12th day of December , 1975, I served 2 copies each of the annexed papers upon David L. Gore, Esq., Bernard Kleinman, Esq., Five Gateway Center, Pittsburgh, Pennsylvania 15222; General Counsel, National Labor Relations Board, 1717 Pennsylvania Avenue, Washington, D.C. 20570; Messrs. Robinson, Silverman, Pearce, Aronsohn, Sand & Berman, 230 Park Avenue, New York, New York 10017

by depositing a true copies of the same in a properly addressed postpaid wrapper in a regularly maintained official depository under the exclusive care and custody of the United States Post Office Department located in the City, County and State of New York.

Marie Mulhall

Sworn to before me this
12th day of December , 1975.

Paul S. Mazunkaintz

PAUL S. MAZUNKAINTZ
NOTARY PUBLIC, STATE OF NEW YORK
No. [illegible]
Qualified in [illegible] County
Certificate filed in New York County
Commission Expires March 30, 1976